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GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

THE

UNREPEALED GENERAL ACTS

OF

THE GOVERNOR GENERAL IN COUNCIL:

WITH CHRONOLOGICAL TABLE OF ALL UNREPEALED ACTS PASSED BY THE GOVERNOR GENERAL IN COUNCIL AND AN INDEX.

From 1834 to 1867, both inclusive.

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FOURTH EDITION.

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THE

UNREPEALED GENERAL ACTS

OF

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PREFACE.

THIS, the fourth edition of the Unrepealed General Acts is based on the last edition published in 1898. It consists of six volumes and has been brought down to the end of the year 1908.

2. Like the former edition the present edition consists of such of the Acts passed by the Governor General in Council as are still in force and which extend to the whole of British India, or which already extend to the greater portion of British India and contain a provision admitting of their extension to the rest of British India or which apply to the three Presidency-towns. The Acts which have not been reprinted in these volumes are either (*a*) General Acts of a purely private character, *e.g.*, Acts V of 1857, VIII of 1864 and IX of 1867; (*b*) Acts which are now in force in so limited an area as to make their reproduction hardly necessary; or (*c*) Acts which, although not actually repealed *in toto*, are practically a dead letter. The first volume contains the Unrepealed General Acts passed during the years 1834 to 1867. From the year 1867 a new era was as it were begun with the passing of the General Clauses Act, 1868 (I of 1868), the provisions of which have been re-enacted by the General Clauses Act, 1897 (X of 1897), and the Acts contained in the first volume end with those passed up to 1868 which are still unrepealed.

3. As in the older edition footnotes have been added containing references to show where Statements of Objects and Reasons, the Reports of the Select Committee (when such have been published) and the Debates or Proceedings in Council connected with each Act passed during and after the year 1862 are to be found in the Gazette. These references, although they cannot be used judicially,* may be of use to the student and the practitioner. Footnotes have also as in that edition been given explaining the changes made by later legislation, these in the text are indicated by asterisks where matter has been repealed, and where it has been added or substituted such additions or substitutions are shown in square brackets; the footnotes to repeals and substitutions give the original words of the Act which are thus affected unless they are of inconvenient length.

* *Vide* judgment of the Privy Council in the *Administrator-General of Bengal* v. *Premlal Mullick*, I. L. R. 22 Cal., at pp. 798 and 799; also, *Norendra Nath Sirkar* v. *Kamalbasini Dasi*, I. L. R. 23 Cal., p. 563, and *Vagliano* v. *Bank of England* (1891), A. C., at p. 145.

4. Footnotes have also been added, which are chiefly (*a*) cross-references to Indian Acts; (*b*) references to English Statutes on which Indian Acts are based; (*c*) references to notifications in Indian Gazettes regarding the commencement, extension and application of some of the more important provisions; and (*d*) references to Rules and Orders made under Acts and published in the Gazettes or in the Collections of Local Rules and Orders published by Local Governments and in the volumes of General Statutory Rules and Orders.

5. The side-notes in connection with Acts prior to Act XV of 1854 have been added since their enactment. The practice, however, beginning with that Act, has been changed and side-notes have regularly been added to all Bills as introduced and have remained in them during their passage through Council and into Law.

6. The Chronological Table prefixed to each volume is a table of all the unrepealed Acts of the Governor General in Council embraced in the period covered by the volume. In the case of those that are not General Acts, a reference is given in the last column indicating the local Code in which they have been published; and lastly, a brief index has been added at the end of each volume and a general or consolidated index to the entire edition at the end of Volume six.

7. The Acts included in the first volume have been printed as modified up to the 31st December 1908.

8. The entire burden of the work connected with the preparation and passing of the first and the fourth volumes through the Press has devolved upon Mr. G. R. Ridge, Superintendent of the Publication Branch of this Department.

S. C. BANERJEE,
Legal Assistant,
Legislative Department.

CALCUTTA;
The 15th January 1909.

LIST OF ABBREVIATIONS USED.

Aj. Code	For	Ajmere Code.
Bal. Code	„	Baluchistan Code.
Ben. Code	„	Bengal Code.
Bom. Code	„	Bombay Code.
Bur. Code	„	Burma Code.
C. P. Code	„	Central Provinces Code.
E. B. and A. Code	„	Eastern Bengal and Assam Code.
Mad. Code	„	Madras Code.
P. and N.-W. Code	„	Punjab and North-West Code.
U. P. Code	„	United Provinces Code.
Coll. Stat.	„	Collection of Statutes relating to India.
Gen. R. and O.	„	General Statutory Rules and Orders.
Ben. R. and O.	„	Bengal List of Local Statutory Rules and Orders.
Bom. R. and O.	„	Bombay List of Local Rules and Orders.
C. P. R. and O.	„	Central Provinces List of Local Rules and Orders.
E. B. and A. R. and O.	„	Eastern Bengal and Assam List of Local Rules and Orders.
Mad. R. and O.	„	Madras List of Local Rules and Orders.
Punj. R. and O.	„	Punjab List of Local Rules and Orders.
U. P. R. and O.	„	United Provinces List of Local Rules and Orders.
Bur. R. M.	„	Burma Rules Manual.
Brit. Enact., N. S. (Mad. and My.)	„	British Enactments in force in Native States (Southern India, Madras and Mysore) Volume.
„ „ „ (Hyd.)	„	British Enactments in force in Native States (Southern India, Hyderabad) Volume.
„ „ „ (N. I.)	„	British Enactments in force in Native States (Northern India) Volume.
„ „ „ (W. I.)	„	British Enactments in force in Native States (Western India) Volume.
„ „ „ (C. I.)	„	British Enactments in force in Native States (Central India) Volume.
„ „ „ (Raj.)	„	British Enactments in force in Native States (Rajputana) Volume.

CHRONOLOGICAL TABLE OF THE *UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL, 1834—68.

With respect to the entries in the fourth column regarding repeals, it may be noted:—

(*a*) Partial repeals covered by later partial repeals are not noted.

(*b*) Where an Act has been locally repealed and afterwards repealed by an Act whose operation is unrestricted, the later repealing Act has alone been noted.

(*c*) Local repeals covered by later local repeals are not noted.

(1) Acts which have been wholly repealed, and (2) Acts which apply to the Straits Settlements only, and are therefore not in force within the present limits of British India, are not included in these tables.

(The references to pages in the fifth column are to pages of this Volume.)

1	2	3	4	5
Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1834	II	The Secretaries to Government Act, 1834.	....	1
1835	XIX	Assistant to Agent for Sardárs in Dekkhan.	....	Bombay Code, Vol. I, Ed. 1907, p. 45.
1836	X	The Bengal Indo-contracts Act, 1836.	....	Bengal Code, Vol. II, Ed. 1905, p. 76. U. P. Code, Vol. I, 4th Ed. 1906, p. 79. Eastern Bengal and Assam Code, Vol. I, Ed. 1907, p. 274.
,,	[1] XXI	The Bengal Districts Act, 1836.	....	Bengal Code, Vol. I, Ed. 1905, p. 342. Eastern Bengal and Assam Code, Vol. I, Ed. 1907, p. 276.

* *N.B.*—For complete Chronological list of all the Acts of the Governor General in Council, whether repealed or unrepealed, *see* Wigley's Chronological Tables and Index of the Indian Statutes, Vol. I.

[1] This title was given by the Repealing and Amending Act, 1903 (1 of 1903), Vol. V, of this Code.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

1	2	3	4	5
Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1837	IV	The Property in Land Act, 1837.	Rep. in part, Act XVI of 1874. Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1886; in the Arakan Hill District, Reg. IX of 1874, s. 3.	2
„	XXXVI	[1] The Madras Public Property Malversation Act, 1837.	....	Madras Code, Vol. I., p. 101.
1838	XVI	Suits, Bombay	....	Bombay Code, Vol. I, Ed. 1907, p. 46.
„	XIX	Coasting Vessels, Bombay.	....	Ditto, p. 47.
„	XXV	The Wills Act, 1838	Rep. (except as to wills made before 1st January, 1866), Act VIII of 1868. Rep. in part, Act XII of 1891. Declared in force throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3.	3
1839	VII	[1] The Madras Rent and Revenue Sales Act, 1839.	....	Madras Code, Vol. I., p. 102.
„	XX	Levy of Haqqs, etc., Bombay.	....	Bombay Code, Vol. I., Ed. 1907, p. 51.
„	XXIV	[1] Ganjam and Vizagapatam Act, 1839.	....	Madras Code, Vol. I., p. 103.

[1] This title was given by Act 11 of 1901, s. 2.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

1	2	3	4	5
Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1839	XXIX	The Dower Act, 1839 .	Rep. (except as to marriages contracted before 1st January, 1866), Act VIII of 1868. Rep. in part, Act XII of 1891. Declared in force throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3.	11
„	XXX	The Inheritance Act, 1839.	Rep. (except as to intestacies occurring before 1st January, 1866), Act VIII of 1868. Rep. in part, Act XII of 1891. Supplemented, Act XXVIII of 1866, s. 29. Declared in force throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3.	14
„	XXXII	The Interest Act, 1839	Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Arakan Hill District, Reg. IX of 1874, s. 3.	18
1840	VIII	The Madras Panchâyats Act, 1840.	....	Madras Code, Vol. I., p. 105.
„	XV	Agents of Foreign Sovereigns, etc., Bombay.	....	Bombay Code, Vol. I., Ed. 1907, p. 52.
1841	X	The Indian Registration of Ships Act, 1841.	Rep. in part, Act XVI of 1874; Rep. in part and amended, Act XI of 1850; Act VII of 1891. Amended, Act V of 1883, s. 38.	21

(See next page.)

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

1	2	3	4	5
Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1841	X—*contd.*	The Indian Registration of Ships Act, 1841—*contd.*	Declared in force throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3.	
"	XII	[1] The Bengal Land-Revenue Sales Act, 1841.		Bengal Code, Vol. II, Ed. 1905, p. 609. Eastern Bengal and Assam Code, Vol. I, Ed. 1907, p. 277.
"	XIX	The Succession (Property Protection) Act, 1841.	Rep. in part, Act VIII of 1855, s. 13; Act XVI of 1874; Act XII of 1876. Extended to Sindh, Bom. Act XII of 1866, s. 12. Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Arakan Hill District (with modifications, and with the exception of s. 16), Reg. IX of 1874, s. 3.	37.
"	XXIV	The Illusory Appointments and Infants' Property Act, 1841.	Rep. in part, Act XXVII of 1866; Act VIII of 1868; Act XVI of 1874; Act XII of 1891.	43
"	XXVII	The Insolvents' Estates (Unclaimed Dividends) Act, 1841.	Rep. in part, Act VIII of 1868; Act XVI of 1874.	47
1843	V	The Indian Slavery Act, 1843.	Rep. in part, Act XVI of 1874. (See next page.)	49

[1] This title was given by the Repealing and Amending Act, 1903 (1 of 1903), s. 2.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

1	2	3	4	5
Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1843	V—*contd.*	The Indian Slavery Act, 1843—*contd.*	Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1886; in the Arakan Hill District, Reg. IX of 1874, s. 3, in Upper Burma generally (except the Shan States), Act XX of 1886, s. 6; in British Baluchistan, Reg. I of 1890, s. 3; in Kachin Hill-tracts, as regards Hill-tribes, Reg. I of 1895, s. 3; in Chin Hills as regards Hill-tribes, Reg. V of 1896, s. 3.	49
1844	VI	[1] The Madras Inland Customs Act, 1844.	....	Madras Code, Vol. I., p. 106.
	XIX	Abolition of Town-duties, etc., Bombay.	....	Bombay Code, Vol. I, Ed. 1907, p. 52.
1846	I	The Legal Practitioners Act, 1846.	Rep. in part, Act XVI of 1874; Act XII of 1876. Rep. in part and amended, Act XII of 1891. Amended, Act XX of 1853, s. 4. Rep. locally, Act XX of 1865; Act IX of 1884, s. 9. Declared in force throughout the Presidencies of Madras and Bombay, except as regards the Scheduled Districts, Act XV of 1874 ss. 4 & 5.	51

[1] This title was given by Act 11 of 1901, s. 2, Genl. Acts, Vol. V.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

1	2		4	5
Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1847	IX	[1] The Bengal Alluvion and Diluvion Act, 1847.	....	Bengal Code, Vol. I, Ed. 1905, p. 59. Eastern Bengal and Assam Code, Vol. I, Ed. 1907, p. 278.
,,	XX	The Indian Copyright Act, 1847.	Rep. in part, Act XVII of 1862; Act XIV of 1870; Act IX of 1871; Act XVI of 1874; Act XII of 1876; Act I of 1879. Declared in force throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3.	54
1848	XV	The Supreme Courts' Officers Trading Act, 1848.	Rep. in part, Act XII of 1876.	64
,,	XX	[1] The Bengal Landholders' Attendance Act, 1848.	....	Eastern Bengal and Assam Code, Vol. I, p. 281, Bengal Code, Vol. II, Ed. 1905, p. 610.
1849	X	[2] The Madras Revenue Commissioner Act, 1849.	....	Madras Code, Vol. I, p. 109.
1850	V	The Indian Coasting Trade Act, 1850.	Declared in force throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3.	65

[1] This title was given by the Repealing and Amending Act, 1903 (1 of 1903).
[2] This title was given by Act 11 of 1901, s. 2.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

1	2	3	4	5
Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1850	XI	The Indian Registration of Ships Act (1841) Amendment Act, 1850.	Rep. in part, Act XIV of 1870. Declared in force throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3.	66
„	XII	The Public Accountants' Defaults Act, 1850.	Rep. in part, Act XIV of 1870. Rep. in part (locally in Bombay), Bom. Act V of 1879. Rep. (locally in Assam), Reg. 1 of 1886. Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1886.	67
„	XVIII	The Judicial Officers' Protection Act, 1850.	Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1886; in the Arakan Hill District, Reg. IX of 1874, s. 3; in Upper Burma generally (except the Shan States), Act XX of 1886, s. 6; in British Baluchistan, Reg. I of 1890, s. 3; in the Angul District, Reg. I of 1894, s. 3; in Chin Hills as regards Hill-tribes, Reg. V of 1896, s. 3.	69

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

1	2	3	4	5
Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1850	XIX	The Apprentices Act, 1850.	Rep. in part, Act XIV of 1870; Act XV of 1874. Amended, Act XII of 1891. Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Arakan Hill District, Reg. IX of 1874, s. 3; in Upper Burma generally (except the Shan States), Act XX of 1886, s. 6.	71
,,	XXI	The Caste Disabilities Removal Act, 1850.	Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1886; in the Arakan Hill District (with modifications), Reg. IX of 1874, s. 3.	79
,,	XXIII	The Calcutta Land-Revenue Act, 1850.	....	Bengal Code, Vol. II, Ed. 1905, p. 615.
,,	XXV	The Forfeited Deposits Act, 1850.	....	Eastern Bengal and Assam Code, Vol. I, p. 283. Bengal Code, Vol. II, Ed. 1905, p. 173.
,,	XXXIV	The State Prisoners Act, 1850.	Rep. in part, Act XII of 1891. Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; (See next page.)	80

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

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Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1850	XXXIV—*contd.*	The State Prisoners Act, 1850—*contd.*	Declared in force — in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1886; in the Arakan Hill District, Reg. IX of 1874, s. 3; in Upper Burma generally (except the Shan States), Act XX of 1886, s. 6; in British Baluchistan, Reg. I of 1890, s. 3; in the Angul District, Reg. I of 1894, s. 3.	
,,	XXXVII	The Public Servants (Inquiries) Act, 1850.	Rep. in part, Act XIV of 1870; Act XVI of 1874; Act XII of 1876; Rep. in part (locally), Act XVI of 1868. Amended, Act I of 1897. Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1886; in the Arakan Hill District (ss. 2 to 22 and 25, with modifications), Reg. IX of 1874, s. 3; in Upper Burma generally (except the Shan States), Act XX of 1886, s. 6.	82
,,	XLIV	[1] The Bengal Board of Revenue Act, 1850.	....	Bengal Code, Vol. I, Ed. 1904, p. 78, Eastern Bengal and Assam Code, Vol. I, Ed. 1907, p. 284.

[1] This title was given by the Repealing and Amending Act, 1903 (1 of 1903), s. 2.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

1	2	3	4	5
Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1851	VIII	The Indian Tolls Act, 1851.	Rep. in part, Act XIV of 1870; Act XII of 1876. Rep. in part, amended and supplemented, Act VIII of 1888. Amended (locally), Act XV of 1864. Rep. (in Bombay), Bom. Act III of 1875. Supplemented, Act VIII of 1892. Declared in force — in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1886; in the Arakan Hill District, Reg. IX of 1874, s. 3; in the Central Provinces (which then included the Sambalpur District now under Bengal), Act XX of 1875, s. 3; in Upper Burma generally (except the Shan States), with a modification, Act XX of 1886, ss. 6 & 7; the Punjab, Act VIII of 1888, s. 1.	87
„	XII	[1] The Madras City Land Revenue Act, 1851.	....	Madras Code, Vol. I, p. 110.
1852	VIII	The Sheriffs' Fees Act, 1852.	....	91
„	XI	Titles to Rent-free Estates, Bombay.	....	Bombay Code, Vol. I, Ed. 1907, p. 53.
„	XXX	The Indian Naturalization Act, 1852.	Rep. in part, Act XVI of 1874; Act XII of 1876. (See next page.)	93

[1] This title was given by Act 11 of 1901, s. 2.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

1	2	3	4	5
Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1852	XXX —*contd.*	The Indian Naturalization Act, 1852—*contd.*	Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Arakan Hill District, Reg. IX of 1874, s. 3; in Upper Burma generally (except the Shan States), Act XX of 1886, s. 6.	
1853	II	The Landholders' Public Charges and Duties Act, 1853.	Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1886; in the Arakan Hill District, Reg. IX of 1874, s. 3; in Upper Burma generally (except the Shan States), Act XX of 1886, s. 6.	96
„	VI	The Rent Recovery Act, 1853.	....	Eastern Bengal and Assam Code, Ed. 1907, Vol. I, p. 285. Bengal Code, Vol. II, Ed. 1905, p. 174.
„	XI	Shore Nuisances (Bombay and Kolaba).	....	Bombay Code, Vol. I, 3rd Ed. 1907, p. 62.
„	XIX	The Recusant Witnesses Act, 1853.	....	Eastern Bengal and Assam Code, Ed. 1907, Vol. I, p. 288.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

1	2	3	4	5
Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1853	XX	The Legal Practitioners Act, 1853.	Rep. in part, Act XIV of 1870. Rep. (locally), Act XX of 1865; Act IX of 1884, s. 9. Declared in force throughout the Presidencies of Madras and Bombay, except as regards the Scheduled Districts, Act XV of 1874, ss. 4 & 5.	98
1854	XVI	Police, United Provinces.	....	U. P. Code, Vol. I, 4th Ed., 1906, p. 80.
,,	XXIV	[1]The Malabar Warknives Act, 1854.	....	Madras Code, Vol. I, p. 113.
,,	XXXI	The Conveyance of Land Act, 1854.	Rep. in part, Act XIV of 1870; Act XVI of 1874; Act XII of 1876. Rep. in part (locally), Act IV of 1882. Declared in force throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3.	99
1855	XI	The Mesne Profits and Improvements Act, 1855.	Rep. in part (locally), Act IV of 1882. Declared in force throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3.	104
,,	XII	The Legal Representatives' Suits Act, 1855.	Rep. in part, Act IX of 1871. Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; (See next page.)	106

[1] This title was given by Act 11 of 1901, s. 2.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

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Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1855	XII—*contd.*	The Legal Representatives' Suits Act, 1855—*contd.*	Declared in force— in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1886; in Upper Burma generally (except the Shan States), Act XX of 1886, s. 6; in the Angul District, Reg. I of 1894, s. 3.	
,,	XIII	The Indian Fatal Accidents Act, 1855.	Rep. in part, Act IX of 1871. Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1886; in the Arakan Hill District, Reg. IX of 1874, s. 3; in Upper Burma generally (except the Shan States), Act XX of 1886, s. 6; in the Angul District, Reg. I of 1894, s. 3.	108
,,	XXIII	The Mortgaged Estates Administration Act, 1855.	Rep. in part, Act XVI of 1874. Rep. (except as to descents or devises occurring or made before 1st January, 1866), Act VIII of 1868. Declared in force throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3.	110
,,	XXIV	The Penal Servitude Act, 1855.	Rep. in part, Act XII of 1867; Act XIV of 1870; Act V of 1871; Act XVI of 1874; (See next page.)	111

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Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1855	XXIV —*contd.*	The Penal Servitude Act, 1855—*contd.*	Rep. in part, Act XII of 1876; Act XII of 1891. Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1886; in Upper Burma generally (except the Shan States), Act XX of 1886, s. 6; in British Baluchistan, Reg. I of 1890, s. 3.	
„	XXVIII	The Usury Laws Repeal Act, 1855.	Rep. in part, Act XIV of 1870. Declared in force throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3.	114
„	XXXII	[1] The Bengal Embankments Act, 1855.	....	Bengal Code, Vol. I, Ed. 1905, p. 402. Eastern Bengal and Assam Code, Vol. I, Ed. 1907, p. 291.
„	XXXVII	[1] The Santhál Parganas Act, 1855.	....	Bengal Code, Vol. I, Ed. 1905, p. 289.
1856	IX	The Indian Bills of Lading Act, 1856.	Declared in force throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3.	116
„	XI	The European Deserters' Act, 1856.	Rep. in part, Act XIV of 1870; Act XII of 1873; (See next page.)	118

[1] This title was given by the Repealing and Amending Act, 1903 (1 of 1903), s. 2.

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Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1856	XI—*contd.*	The European Deserters' Act, 1856—*contd.*	Rep. in part, Act XVI of 1874. Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1886.	
,,	XII	The Civil Courts Amins Act, 1856.	....	U. P. Code, Vol. I, p. 81.
,,	XV	The Hindu Widows' Re-marriage Act, 1856.	Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1886; in the Arakan Hill District, Reg. XI of 1874, s. 3; in the Angul District, Reg. I of 1894, s. 3.	121
,,	XVIII	[1]The Calcutta Land-Revenue Act, 1856.	....	Bengal Code, Vol. II, Ed. 1905, p. 618.
,,	XX	[1]The Bengal Chaukidari Act, 1856.	....	Ajmer Code, Ed. 1905, p. 27. U. P. Code, Vol. I, p. 86. Punjab and N.-W. Code, Ed. 1903, p. 17.
,,	XXII	[1]The Karatoya Tolls Act, 1856.	....	Bengal Code, Vol. II, Ed. 1905, p. 129.

(See next page.)

[1] This title was given by the Repealing and Amending Act, 1903 (1 of 1903), s. 2.

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Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1856	XXII —*contd.*	[1] The Karatoya Tolls Act, 1856—*contd.*	....	Eastern Bengal and Assam Code, Vol. I., Ed. 1907, p. 301.
1857	II	The Calcutta University Act, 1857.	Rep. in part, Act XII of 1876; Act XII of 1891; Act VIII of 1904. Supplemented, Act XLVII of 1860; Act I of 1884.	124
„	IV	Tobacco (Bombay Town).	....	Bombay Code, Vol. I, Ed. 1907, p. 65.
„	VII	[2] The Madras Uncovenanted Officers Act, 1857.	....	Madras Code, Vol. I, p. 117.
„	X	[1] The Santhál Parganas Act, 1857.	....	Bengal Code, Vol. I, Ed. 1905, p. 292.
„	XI	The State Offences Act, 1857.	Rep. in part, Act XVII of 1862; Act XII of 1876. Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Arakan Hill District, Reg. IX of 1874, s. 3; in Upper Burma generally (except the Shan States), Act XX of 1886, s. 6; in British Baluchistan, Reg. I of 1890, s. 3; in the Angul District, Reg. I of 1894, s. 3; in Kachin Hill-tracts, as regards Hill-tribes, Reg. I of 1895, s. 3; (See next page.)	130

[1] This title was given by the Repealing and Amending Act, 1903 (1 of 1903), s. 2.
[2] This title was given by Act 11 of 1901, s 2.

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Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1857	XI —*contd.*	The State Offences Act 1857—*contd.*	Declared in force— in Chin Hills as regards Hill-tribes, Reg. V of 1896, s. 3.	
„	XIII	[1]The Opium Act, 1857.	....	Bengal Code, Vol. IV, Ed. 1905, p. 3. Eastern Bengal and Assam Code, Vol. I, Ed. 1907, p. 306. Central Provinces Code, Ed. 1904, p. 23. U. P. Code, Vol. I, 1906, p. 104.
„	XIX	Joint-stock Companies	Rep. (except as to Table B), Act X of 1866. Table B is in force so far as it applies to any Company existing on 1st May, 1882—see Act VI of 1882, s. 2 (*c*).	Table B is published as an appendix to the Indian Companies Act, 1882 (VI of 1882).
„	XXI	[1]The Howrah Offences Act, 1857.	....	Bengal Code, Vol. II, Ed. 1905, p. 32.
„	XXII	The Bombay University Act, 1857.	Rep. in part, Act XII of 1876; Act XII of 1891; Act VIII of 1904. Supplemented, Act XLVII of 1860.	132
„	XXV	The Forfeiture Act, 1857.	Rep. in part, Act V of 1869; Act IX of 1871. Rep. in part and amended, Act XII of 1891. (See next page.)	137

[1]This title was given by the Repealing and Amending Act, 1903 (1 of 1903), s. 2.

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Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1857	XXV —*contd.*	The Forfeiture Act, 1857—*contd.*	Supplemented, Act IX of 1859. Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3. in Upper Burma (except the Shan States), Act XIII of 1898, s. 4.	
,,	XXVII	The Madras University Act, 1857.	Rep. in part, Act XII of 1876; Act XII of 1891; Act VIII of 1904. Supplemented, Act XLVII of 1860; Act I of 1884.	140
,,	XXIX	Land-Customs, Bombay.	....	Bombay Code, Vol. I, Ed. 1907, p. 75.
1858	I	[1]The Madras Compulsory Labour Act, 1858.	....	Madras Code Vol. I, p. 125.
,,	III	The State Prisoners Act, 1858.	Rep. in part, Act XIV of 1870; Act XII of 1891. Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1899, s. 3; in the Arakan Hill District (ss. 2 & 5), Reg. IX of 1874, s. 3; (See next page.)	145

[1] This title was given by Act 11 of 1901, s. 2.

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Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1858	III —*contd.*	The State Prisoners Act, 1858—*contd.*	Declared in force— in Upper Burma (except the Shan States), (s. 5), Act XIII of 1898, s. 4; in British Baluchistan, (s. 5) Reg. I of 1890, s. 3; in the Angul District Reg. I of 1894, s. 3; in the Chittagong Hill tracts, Reg. I of 1900, s. 4.	
,,	XXXI	[1] The Bengal Alluvial Land Settlement Act, 1858.	....	Bengal Code, Vol. I, Ed. 1904, p. 61. Eastern Bengal and Assam Code, Vol. I, Ed. 1907, p 314.
,,	XXXIV	The Lunacy (Supreme Courts) Act, 1858.	Rep. in part, Act XVI of 1874.	147
,,	XXXV	The Lunacy (District Courts) Act, 1858.	Rep. in part, Act XIV of 1870. (in Bengal), Ben. Act IX of 1879. Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1899, (s. 3); in the Arakan Hill District (with a modification), Reg. IX of 1874, s. 3; in Upper Burma (except the Shan States), Act XIII of 1898, s. 4; in British Baluchistan, Reg. I of 1890, s. 3.	154

[1] This title was given by the Repealing and Amending Act, 1903 (1 of 1903).

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Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1858	XXXVI	The Indian Lunatic Asylums Act, 1858.	Rep. in part, Act XVI of 1874. Rep. in part and amended, Act XX of 1889. Amended, Act XVIII of 1886. Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Santhál Parganas Reg. III of 1872, s. 3, as amended by Reg. III of 1899, s. 3; in the Arakan Hill District, Reg. IX of 1874, s. 3; in Upper Burma (except the Shan States), Act XIII of 1898, s. 4; in British Baluchistan, Reg. I of 1890, s. 3; in the Angul District, Reg. I of 1894, s. 3.	159
1859	I.	The Indian Merchant Shipping Act, 1859.	Rep. in part, Act XV of 1863; Act XIV of 1870; Act XVI of 1874; Act IV of 1875; Act XII of 1876. Amended, Act XIII of 1876, ss. 9 & 10; Act V of 1883, ss. 34 to 37; Act VI of 1891, ss. 1 to 5; Act XII of 1891; Act VI of 1906; Declared in force throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3.	170

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Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1859	V	[1]The Bengal Ghatwali Lands Act, 1859.	....	Bengal Code, Vol. I, Ed. 1905, p. 570.
,,	IX	The Forfeiture Act, 1859.	Rep. in part, Act VIII of 1868; Act XII of 1891. Ss. 16-18 and 20 declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in Upper Burma (except the Shan States), Act XIII of 1898, s. 4; in British Baluchistan (except the last para. of s. 18), Reg. I of 1890, s. 3.	211
,,	X	[1]The Bengal Rent Act, 1859.	....	Bengal Code, Vol. II, Ed. 1905, p. 182.
,,	XI	[1]The Bengal Land Revenue Sales Act, 1859.	....	Bengal Code, Vol. IV, Ed. 1905, p. 341. Eastern Bengal and Assam Code, Vol. I, Ed. 1907, p. 318.
,,	XII	[1]The Calcutta Pilots Act, 1859.	....	Bengal Code, Vol. IV, Ed. 1905, p. 88.
,,	XIII	The Workman's Breach of Contract Act, 1859.	Rep. in part, Act XVI of 1874.	213
,,	XX	[2]The Moplah Outrages Act, 1859.	....	Madras Code, Vol. I, p. 128.
,,	XXIV	[2]The Madras District Police Act, 1859.	....	Madras Code, Vol. I, p. 131.

1 This title was given by the Repealing and Amending Act, 1903 (1 of 1903), s. 2.
2 This title was given by the Amending Act, 1901 (11 of 1901).

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Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1860	IX	The Employers and Workmen (Disputes) Act, 1860.	Rep. in part, Act IX of 1871. Declared in force in— the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1899, s. 3; Upper Burma (except the Shan States), Act XIII of 1898, s. 4; British Baluchistan, Reg. I of 1890, s. 3.	215
,,	XXI	The Societies Registration Act, 1860.	Rep. in part, Act XVI of 1874. Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3. in Upper Burma (except the Shan States), Act XIII of 1898, s. 4.	217
,,	XXXIV	The Government Officers' Indemnity Act, 1860.	....	223
,,	XLV	The Indian Penal Code	Rep. in part, Act XIV of 1870; Act X of 1882; Act XIII of 1889. Rep. in part (in Sindh Frontier), Reg. V of 1872, s. 11. Rep. in part and amended— Act VIII of 1882; Act XII of 1891; Amended, Act XXVII of 1870; Act XIX of 1872; Act X of 1873, s. 15; Act X of 1886, ss. 21-24 (*1*); (See next page.)	248

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Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1860	XLV —*contd.*	The Indian Penal Code —*contd.*	Amended, Act XIV of 1887, s. 79; Act I of 1889, s. 9; Act IV of 1889, s. 3; Act IX of 1890, s. 149; Act X of 1891, s. 1; Act III of 1894, ss. 5-8; Act III of 1895, ss. 1-4; Act VI of 1896; Act IV of 1898; Act XII of 1899, s. 2; (as to Allahabad University), Act XVIII of 1887, s. 18 (*2*). Supplemented, Act VI of 1864— (in Upper Burma), Act XIII of 1898, s. 4 (*b*); (in Punjab Frontier Districts and British Baluchistan), Reg. IV of 1887, ss. 8, 14, 15, 31 & 32. Applied to offences committed before the 1st January, 1862— (in the Punjab), Act IV of 1872, s. 39; (in Ajmer-Merwára), Reg. III of 1877, s. 29. Declared in force— in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1899, s. 3; in the Arakan Hill District, Reg. IX of 1874, s. 3; (See next page.)	

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Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1860	XLV *concld.*	The Indian Penal Code —*concld.*	Declared in force— in Upper Burma (except the Shan States), Act XIII of 1898, s. 4; in British Baluchistan, Reg. I of 1890, s. 3; in the Angul District, Reg. I of 1894, s. 3; in the Chittágong Hill-tracts, Reg. I of 1900, s. 4; in Kachin Hill-tracts as regards Hill-tribes (with modifications), Reg. I of 1895, s. 3; in certain tracts in the Chin Hills (with modifications), Reg. V of 1896, s. 3.	
1861	V	The Police Act, 1861 .	Rep. in part, Act IX of 1871; Act XVI of 1874; Act X of 1882. Rep. in part (in Bengal), Ben. Act VII of 1869; Rep. in part (in Rangoon), Bur. Act IV of 1899, s. 2, when notified (and see ss. 3, 4). Amended, Act III of 1888; Act VIII of 1895, Act I of 1903. locally, Reg. VII of 1901. Supplemented, Ben. Act VII of 1869. Portions extended to Calcutta and Suburbs, with modifications, Ben. Act I of 1898. Declared in force in— the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1899, s. 3; the Arakan Hill District, except s. 11, Reg. IX of 1874, s. 3; (See next page.)	378

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Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1861	V—*contd.*	The Police Act, 1861—*contd.*	Declared in force in— Upper Burma generally (except the Shan States), Act XIII of 1898, s. 4; British Baluchistan, Reg. I of 1890, s. 3; the Angul District, Reg. I of 1894, s. 3; the Chittagong Hill-tracts, Reg. I of 1900, s. 4.	
,,	XVI	The Stage-Carriages Act, 1861.	Rep. in part, Act XIV of 1870. Amended, Act XVI of 1876. Rep. in part and amended, Act I of 1898.	396
1862	III	The Government Seal Act, 1862.	Declared in force throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3.	402
1863	XVI	The Excise (Spirits) Act, 1863.	Rep. in part, Act XII of 1891. S. 1 amended, Act VIII of 1894, s. 6. Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1899, s. 3; in the Angul District, Reg. I of 1894, s. 3; in Upper Burma (except the Shan States), Act XIII of 1898, s. 4.	403
,,	XX	The Religious Endowments Act, 1863.	Rep. in part, Act VII of 1870; Act XIV of 1870; Act XVI of 1874.	406

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Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1863	XX —*contd.*	The Religious Endowmen's Act, 1863 —*contd.*	S. 3, amended, Act XII of 1891. Extended to the Kanára District, Bom. Act VII of 1865.	
„	XXIII	The Waste Lands (Claims) Act, 1863.	Rep. in part, Act IX of 1871. Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Arakan Hill District, Reg. IX of 1874, s. 3.	415
„	XXXI	The Official Gazettes Act, 1863.	Declared in force throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3.	421
1864	II	Civil and Criminal Justice, Aden.	...	Bom. Code, Vol. I, Ed. 1907, p. 81.
„	III	The Foreigners' Act, 1864.	Rep. in part, Act XII of 1876. S. 24 amended, Act XII of 1891. Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1899, s. 3; in the Arakan Hill District, Reg. IX of 1874, s. 3; in Upper Burma generally (except the Shan States), Act XIII of 1898, s. 4; in British Baluchistan, Reg. I of 1890, s. 3; in the Angul District, Reg. I of 1894, s. 3.	423

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Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1864	VI	The Whipping Act, 1864.	Rep. in part, Act X of 1872; Act XVI of 1874; Act X of 1882. Rep. in part and amended, Act V of 1900. Amended, Act III of 1895, s. 5. Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1899, s. 3; in Upper Burma generally, except the Shan States (with a new s. 6), Act XIII of 1898, s. 4; in British Baluchistan, Reg. I of 1890, s. 3; in the Angul District, Reg. I of 1894, s. 3; in the Chittagong Hill-tracts (with a modification), Reg. I of 1900, s. 4; in Kachin Hill-tracts, as regards Hill-tribes (with a modification), Reg. I of 1895, s. 3; in certain tracts in the Chin Hills (with a modification), Reg. V of 1896, s. 3.	430
„	XV	The Indian Tolls Act, 1864.	Supplemented, Act VIII of 1888. Declared in force in— the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1899, s. 3; (See next page.)	438

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Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1864	XV —*contd.*	The Indian Tolls Act, 1864—*contd.*	Declared in force in— the Central Provinces, (which then included the Sambalpur district now under Bengal), Act XX of 1875, s. 3; the Punjab, Act VIII of 1888, s. 1. Upper Burma (except the Shan States), Act XIII of 1898, s. 4.	
„	XVII	The Official Trustees Act, 1864.	Rep. in part, Act XIV of 1870; Act XII of 1876; Act XII of 1891; Act VI of 1900, s. 48. Amended, Act II of 1890, ss. 1-7.	442
1865	III	The Carriers Act, 1865.	Rep. in part, Act IX of 1890. Amended, Act X of 1899, s. 2. Rep. (as to carriers by rail), Act IV of 1879. Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1899, s, 3; in the Arakan Hill District (with a modification), Reg. IX of 1874, s. 3; in Upper Burma generally (except the Shan States), Act XIII of 1899, s. 4.	452
„	X	The Indian Succession Act, 1865.	Rep. in part, Act XXIV of 1867; Act VII of 1870; Act XV of 1877; (See next page.)	473

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Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1865	X —*contd.*	The Indian Succession Act, 1865—*contd.*	Rep. in part, Act VI of 1900, s. 48. Rep. in part and amended, Act VI of 1889, ss. 2-10; Act XII of 1891. Amended, Act II of 1877, s. 1 and Act VI of 1900, s. 47; Act VI of 1881; Act II of 1890, s. 9. Act V of 1902, s. 9; Act VIII of 1903. Application of Pt. III, Pt. IV (except s. 25), Pt. V and s. 43 restricted, Act XXI of 1865, s. 8. Application of ss. 190 and 239 restricted, Act VII of 1901, s. 3. Application extended, Act XXI of 1870 (as amended by Act V of 1881, s. 154). Declared in force— in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1899, s. 3; in the Arakan Hill District (except ss. 329 and 330 and the schedule) but not so as to affect Native Christians, Reg. IX of 1874, s. 3; in Upper Burma generally (except the Shan States), Act XIII of 1898, s. 4; in British Baluchistan, Reg. I of 1890, s. 3.	

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Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1865	XV	The Pársí Marriage and Divorce Act, 1865.	Rep. in part, Act VII of 1870; Act XIV of 1870; Act XII of 1876. Amended, Act VI of 1886, s. 31. Declared in force throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3.	560
"	XXI	The Pársí Intestate Succession Act, 1865.	Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 31. in the Arakan Hill District, Reg. IX of 1874, s. 3. in Upper Burma (except the Shan States), Act XIII of 1898, s. 4.	574
"	XXX	[1]The Madras Irrigation and Canal Company Act, 1865.	....	Madras Code, Vol. I, p. 139.
1866	XXI	The Native Converts' Marriage Dissolution Act, 1866.	Rep. in part, Act VII of 1870; Act XVI of 1874; Act XII of 1891. Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1899, s. 3; in the Arakan Hill District, Reg. IX of 1874, s. 3.	577

1 This title was given by the Repealing and Amending Act 11 of 1901, s. 2.

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Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1866	XXIII	Correction of Bombay High Court Letters Patent.	....	Bombay Code, Vol. I, Ed. 1907, p. 88.
,,	XXV	The Unclaimed Deposits Act, 1866.	Rep. in part, Act XXIV of 1867; Act XVI of 1874; Act XII of 1876; Act XII of 1891. Supplemented, Act V of 1870.	586
,,	XXVI	The Oudh Sub-Settlement Act, 1866.	....	U. P. Code, Vol. I, Ed. 1906, p. 112.
,,	XXVII	The Indian Trustees Act, 1866.	Rep. in part, Act XIV of 1870; Act XVI of 1874. Rep. in part (locally), Act IV of 1882. Amended, Act VI of 1900, s. 47.	590
,,	XXVIII	The Trustees' and Mortgagees' Powers Act, 1866.	Rep. in part, Act XVI of 1874; Act VII of 1882, s. 6. Rep. in part (locally), Act II of 1882. Amended, Act VI of 1900, s. 47. Declared in force throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3.	609
1867	I	Ganges Tolls	....	U. P. Code, Vol. I, Ed. 1906, p. 116.

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1	2	3	4	5
Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1867	III	The Public Gambling Act, 1867.	....	Ajmer Code, Ed. 1905, p. 45. Eastern Bengal and Assam Code, Vol. I, Ed. 1907, p. 340. Baluchistan Code, Ed. 1900, p. 9. Central Provinces Code, Ed. 1904, p. 26. Coorg Code, Ed. 1907, p. 8. U. P. Code, Ed. 1906, Vol. I, p. 122, and Punjab and N.-W. Code, Ed. 1903, p. 36.
,,	XVI	The Acting Judges Act, 1867.	....	626
,,	XIX	[1]The Darjeeling (High Court Jurisdiction) Act, 1867.	....	Bengal Code, Vol. I, Ed. 1905, p. 211.
,,	XXII	The Saráis Act, 1867	Rep. in part, Act XII of 1891.	627
,,	XXIII	[1]The Punjab Murderous Outrages Act, 1867.	....	Punjab and N.-W. Code, Ed. 1903, p. 42.
,,	XXV	The Press and Registration of Books Act, 1867.	Rep. in part, Act XIV of 1870. Rep. in part and amended, Act X of 1890; Act XII of 1891.	633

[1] This title was given by the Repealing and Amending Act, 1903 (1 of 1903), s. 2.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

1	2	3	4	5
Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation.	Page.
1867	XXV —*contd.*	The Press and Registration of Books Act, 1867—*contd.*	Declared in force— throughout British India, except as regards the Scheduled Districts, Act XV of 1874, s. 3; in the Santhál Parganas, Reg. III of 1872, s. 3, as amended by Reg. III of 1899, s. 3; in Upper Burma generally (except the Shan States), Act XIII of 1898, s. 4.	
„	XXXII	The Chief Commissioners' Powers Act.	*Obsolete in Oudh.*	Central Provinces Code, Ed. 1904, p. 31.
1868	V	Commissioner in Sindh	....	Bombay Code, Vol. I, Ed. 1907, p. 89.
„	XXIV	Inoculation, Kumaon and Garhwal.	....	U. P. Code, Ed. 1906, Vol. I, p. 128.

THE

UNREPEALED GENERAL ACTS

OF

THE GOVERNOR GENERAL IN COUNCIL.

ACT No. II OF 1834 [1].

[*20th November, 1834.*]

Secretaries to Government to exercise powers of Chief Secretaries.

BE it enacted that each of the Secretaries to the Government of India and to the Government of Fort William in Bengal shall be competent to perform all the duties and to exercise all the powers which by any Act of Parliament or any Regulation now in force are assigned to the Chief Secretary to the Government of Fort William in [2] Bengal; and that each of the Secretaries to the Governments of Fort St. George and Bombay respectively shall be competent to perform all the duties, and to exercise all the powers which, by any Act of Parliament, or any Regulation now in force are assigned to the Chief Secretaries to the Governments of Fort St. George and Bombay, respectively.

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[1] Short title, "The Secretaries to Government Act, 1834." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared, under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—the Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44) and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum. *See* Gazette of India, 1881, Pt. I, p. 504.

[2] *See* the East India Company Act, 1793 (33 Geo. 3, c. 52), s. 39, and the East India Company Act, 1813 (53 Geo. 3, c. 155), s. 79, Coll. Stats. Ind., Vol. I.

ACT No. IV OF 1837 [1].

[*17th April, 1837.*]

All subjects of Crown empowered to hold land.

1. [2] * * * * * * * * * * * * It shall be lawful for any subject of His Majesty to acquire and hold in perpetuity, or for any term of years, property in land, or in any emoluments issuing out of land, in any part of the territories of the East India Company.[3]

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[1] Short title, "The Property in Land Act, 1837." See the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act appears to have been passed pursuant to the Government of India Act, 1833 (3 & 4 Will. 4, c. 85), s. 86, Coll. Stats. Ind., Vol. I.

It has been declared, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, to be in force in the whole of British India, except as regards the Scheduled Districts. [For Act 15 of 1874, *see* Genl. Acts, Vol. II.]

It has also been declared to be in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3 and schedule, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, Ben. Code, Vol. I.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India,	1880, Pt. I, p. 672.
West Jalpáiguri	Ditto	1881, Pt. I, p. 74.
The District of Hazáribágh	Ditto	1881, Pt. I, p. 507.
The District of Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44)	Ditto	1881, Pt. I, p. 508.
The District of Mánbhum	Ditto	1881, Pt. I, p. 509.
Pargana Dhálbhum in the District of Singhbhum	Ditto	1881, Pt. I, p. 510.
The Scheduled portion of the Mirzápur District	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Ghazi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575,* but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N.-W. Code)	Ditto	1886, Pt. I, p. 48.
The District of Lahaul	Ditto	1886, Pt. I, p. 301.
The District of Sylhet	Ditto	1879, Pt. I, p. 631.

The Scheduled Districts in Ganjam and Vizagapatam, *see* Fort St. George Gazette, 1898, Pt. I, p. 666, and Gazette of India, 1898, Pt. I, p. 869.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the Scheduled Districts of Kumáon and Garhwál. *See* Gazette of India, 1876, Pt. I, p. 606.

[2] The words "It is hereby enacted that, after the 1st day of May next" in s. 1 were repealed by the Repealing Act, 1874 (16 of 1874).

[3] For the old law, *see* the Bengal Land-Revenue Regulation, 1793 (2 of 1793), ss. 17 and 46), repealed by the Repealing Act, 1868 (8 of 1868), s. 1, and the Repealing Act, 1874 (16 of 1874), s. 1, respectively.

2.[1] * * * * * * All rules which prescribe the manner in which such property as is aforesaid may now be acquired and held by Natives of the said territories[2] shall extend to all persons who shall, under the authority of this Act, acquire or hold such property.[3] Rules applied to holding under Act.

ACT No. XXV OF 1838.[4]

[*8th October*, 1838.]

1. IT is hereby enacted that the words and expressions hereinafter mentioned shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows; (that is to say,) Interpretation.

the word "will" shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament of devise of the custody and tuition of any child by virtue of an Act passed in the twelfth year of the reign of King Charles the Second, intituled "An Act for taking away the Court of Wards and liveries, and tenures *in capite* and by Knight's service and purveyance, and for settling a "Will." 12 Chas. 2, c. 24.

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[1] The words "And it is hereby enacted that" in s. 2 were repealed by the Repealing Act, 1874 (16 of 1874).

[2] For definitions of the term "Natives of India," *see* the Government of India Act, 1870 (33 Vict., c. 3), s. 6, Coll. Stats. Ind., Vols. I and II, respectively, and the Army Act (44 & 45 Vict., c. 58), s. 190 (22).

[3] *See* also the Landholders' Public Charges and Duties Act, 1853 (2 of 1853), *infra*, p. 95.

[4] Short title, "The Wills Act, 1838." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act is based on the Wills Act, 1837 (7 Will. 4 & 1 Vict., c. 26).

The whole Act, except as to wills made before the 1st January, 1866, was repealed by the Repealing Act, 1868 (8 of 1868).

As to wills made before the 1st January, 1866, the Act has been declared, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, to be in force in the whole of British India, except as regards the Scheduled Districts. [For Act 15 of 1874, *see* Genl. Acts, Vol. II.]

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

West Jalpáiguri . . .	*See* Gazette of India, 1881, Pt. I, p. 74.	
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44) and Mánbhum and Pargana Dhálbhum and the Kolhán in the District of Singbhum	Ditto	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzápur District . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar . . .	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Ghazi Khán. (*Portions of the Districts of Hazára,*		

revenue upon His Majesty in lieu thereof," or by virtue of an Act passed in the Parliament of Ireland in the fourteenth and fifteenth years of the reign of King Charles the Second, intituled "An Act for taking away the Court of Wards and liveries, and tenures *in capite* and by Knight's service," and to any other testamentary disposition; and

"Real estate."

the words "real estate" shall extend to messuages, lands, rents and hereditaments, whether corporeal, incorporeal or personal, and to any undivided share thereof, and to any estate, right or interest (other than a chattel interest) therein; and

"Personal estate."

the words "personal estate" shall extend to leasehold estates and other chattels real, and also to moneys, shares of Government and other funds securities for money (not being real estates), debts, choses in action, rights, credits, goods and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein; and

Number and gender.

every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and

every word importing the masculine gender only shall extend and be applied to a female as well as a male.

Enactments repealed.

2. [1] * * * * * * An Act passed in the thirty-second year of the reign of King Henry the Eighth, intituled [2] "The Act of Wills, Wards and primer seisins, whereby a man may devise two parts of his land," and also 32 Hen. 8, c. 1.

an Act passed in the thirty-fourth and thirty-fifth years of the reign of the said King Henry the Eighth, intituled "The Bill concerning the explanation of Wills," [2] and also 34 & 35 Hen. 8, c. 5.

Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and ibid, *1902, Pt. I, p. 575,* but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N. W. Code) . . *See* Gazette of India, 1886, Pt. I, p. 48.

The District of Lahaul . .	Ditto	1886, Pt. I, p. 301.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushái Hills) . .	Ditto	1897, Pt. I, p. 299.

The Scheduled Districts in Ganjam and Vizagapatam, *see* Fort St. George Gazette, 1898, Pt. I, p. 666, and Gazette of India, 1898, Pt. I, p. 869.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the Scheduled Districts of Kumáon and Garhwál. *See* Gazette of India, 1876, Pt. I, p. 606.

[1] The words "And it is hereby enacted that" were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[2] Repealed by 7 Will. 4 & 1 Vict., c. 26, s. 2, except as to wills made before 1838.

an Act passed in the Parliament of Ireland in the tenth year of the reign of King Charles the First, intituled "An Act how Lands, Tenements, etc., may be disposed by will or otherwise, and concerning wards and primer seisins," and also

29 Chas. 2, c. 3. so much of an Act [1] passed in the twenty-ninth year of the reign of King Charles the Second, intituled "An Act for prevention of Frauds and Perjuries," and of an Act passed in the Parliament of Ireland in the seventh year of the reign of King William the Third, intituled "An Act for prevention of Frauds and Perjuries as relates to devises or bequests of lands or tenements, or to the revocation or alteration of any devise in writing of any lands, tenements or hereditaments, or any clause thereof, or to the devise of any estate *pur autre vie*, or to any such estate being assets, or to nuncupative wills, or to the repeal, altering or changing of any will in writing concerning any goods or chattels or personal estate, or any clause, devise or bequest therein," and also so much of an Act passed in the fourth and fifth years of the reign of Queen

4 & 5 Anne, c. 13. Anne, intituled "An Act for the amendment of the Law and the better advancement of Justice," and of an Act passed in the Parliament of Ireland in the sixth year of the reign of Queen Anne, intituled "An Act for the amendment of the Law and the better advancement of Justice" as relates to witnesses to nuncupative wills, and

so far as the following Acts may be construed to have any operation within the territories of the East India Company,

14 Geo. 2, c. 20. so much of an Act passed in the fourteenth [2] year of the reign of King George the Second, intituled "An Act to amend the law concerning common recoveries, and to explain and amend an Act made in the twenty-ninth year of the reign of King Charles the Second, intituled 'An Act for prevention of frauds and perjuries,'" as relates to estates *pur autre vie;* and also

25 Geo. 2, c. 6. an Act passed in the twenty-fifth year of the reign of King George the Second, intituled "[3]An Act for avoiding and putting an end to certain doubts and questions relating to the attestation of wills and codicils concerning real estates in that part of Great Britain called England, and in His Majesty's colonies and plantations in America," [4] * * * * * and also

an Act passed in the Parliament of Ireland in the same twenty-fifth year of the reign of King George the Second, intituled "An Act for the avoiding and putting an end to certain doubts and questions relating to the attestation of wills and codicils concerning real estates,"

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[1] "The Statute of Frauds," Coll. Stats., Ind., Vol. I.

[2] Repealed by the Statute Law Revision Act, 1867.

[3] Repealed, except as to American Colonies and except as to wills made before 1838, by 7 Will. 4 & 1 Vict., c. 26, s. 2.

[4] The words "except so far as relates to His Majesty's colonies and plantations in America," were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

shall from the passing of this Act cease to have effect in the territories of the East India Company, except so far as the same Acts or any of them respectively relate to any wills or estates *pur autre vie* to which this Act does not extend.

Wills to which Act applies.

3. [1] * * * This Act shall only extend to the wills of persons whose personal property cannot by the law of England pass to their representatives without probate or letters of administration obtained in one of Her Majesty's Supreme Courts of Judicature, and [2] * the Statutes and parts of Statutes aforesaid are only repealed as far as they relate to the succession to the property of such persons.

Limitation of repeal.

Property disposable by will.

4.[1] * * * * It shall be lawful for every person to devise, bequeath or dispose of by his will, executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed or disposed of, would devolve upon the heir-at-law of him, or, if he became entitled by descent, of his ancestor, or upon his executor or administrator,

and [3] * the power hereby given shall extend to all estates *pur autre vie*, whether there shall or shall not be any special occupant thereof, and whether the same shall be a corporeal or an incorporeal hereditament, and whether the same shall be freehold or of any other tenure, and also to all contingent, executory or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created, or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, and other rights of entry, and also to such of the same estates, interests and rights respectively and other real and personal estate as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

Infant's will invalid.

5.[1] * * * * No will made by any person under the age of twenty-one years shall be valid.

Married woman's will.

6.[4] * * * * No will made by any married woman shall be valid, except such a will as might have been made by a married woman before the passing of this Act.

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[1] The words " And it is hereby enacted that " in ss. 3 to 5 were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[2] The word " that " was repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[3] The word ".that " in para. 2 of s. 4 was repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[4] The words " Provided also, and it is hereby enacted " in s. 6 were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

Mode of execution.

7.[1] * * * * No will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned; (that is to say) it shall be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction, and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

Execution of appointment by will.

8.[1] * * * * No appointment made by will in exercise of any power shall be valid unless the same be executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding that it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

Publication unnecessary.

9.[1] * * * * Every will executed in manner hereinbefore required shall be valid without any other publication thereof.

Incompetency of attesting witness to prove will not to invalidate it.

10.[1] * * * * If any person who shall attest the execution of a will shall at the time of the execution thereof, or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

Devise to attesting witness, or to his or her wife or husband, void, but witness may prove will.

11.[1] * * * * If any person shall attest the execution of any will, to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift or appointment of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts) shall be thereby given or made, such devise, legacy, estate, interest, gift or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift or appointment mentioned in such will.

Attesting witness with whose debt estate is charged by will, admissible to prove it.

12.[1] * * * * In case by any will any real or personal estate shall be charged with any debt, or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged shall attest the execution of such will, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

Executor not incompetent to prove will.

13.[1] * * * * No person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove

[1] The words "And it is hereby enacted, that" in ss. 7 to 13 were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

the execution of such will, or a witness to prove the validity or invalidity thereof.

Revocation of will by testator's marriage.

14.[1] * * * * Every will made by a man or woman shall be revoked by his or her marriage (except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir, executor or administrator, or the person entitled as his or her next of kin under the [2] Statute of Distribution).

Will not revoked by presumption of intention.

15.[1] * * * * No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.

Will or codicil how revocable.

16.[1] * * * * No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.

Effect of obliteration, interlineation or alteration.

17.[1] * * * * No obliteration, interlineation or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the executon of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or some other part of the will opposite or near to such alteration, or at the foot or end of or opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

Revival of revoked will.

18.[1] * * * * No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in a manner hereinbefore required, and showing an intention to revive the same, and, when any will or codicil which shall be partly revoked and afterwards wholly revoked shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary be shown.

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[1] The words " And it is hereby enacted, that " in ss. 14 to 18 were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[2] *See* the Statute of Distribution (22 & 23 Chas. 2, c. 10); the Statute of Frauds (29 Chas. 2, c. 3), s. 25, Coll. Stats. Ind., Ed. 1881, Vol. I, not reproduced in new edition as being rep. in British India by this Act; and 1 Jas. 2, c. 17, s. 7 [an Act for reviving and continuance of several Acts of Parliament therein contained].

19.[1] * * * * No conveyance or other act made or done subsequently to the execution of a will of, or relating to, any real or personal estate therein comprised except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

Effect of acts not amounting to revocation done subsequent to execution.

20.[1] * * * * Every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

Will to be construed as if executed immediately before death.

21.[1] * * * * Unless a contrary intention shall appear by the will, such real estate and interest therein as shall be comprised or intended to be comprised in any devise in such will contained which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.

Property comprised in devise which cannot take effect to be included in residuary devise.

22.[1] * * * * A general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator or any bequest of personal estate, described in a general manner shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

General devise an execution of power of appointment.

23.[1] * * * * Where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

Devise without words of limitation.

24.[1] * * * * In any devise or bequest of real or personal estate the words "die without issue," or "die without leaving issue," or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure

Construction of words importing want or failure of issue.

[1] The words "And it is hereby enacted, that" in ss. 19 to 24 were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise: Provided that this Act shall not extend to cases where such words as aforesaid import, if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

Devise on real estate to trustee or executor.

25.[1] * * * * Where any real estate shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication.

Devise of real estate to trustee without limitation.

26.[1] * * * * Where any real estate shall be devised to a trustee without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

Devise of estate tail when devisee dies in testator's lifetime, leaving inheritable issue.

27.[1] * * * * Where any person to whom any real estate shall be devised for an estate tail, or an estate in quasi-entail, shall die in the lifetime of the testator, leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Devise to issue of testator, who dies in testator's lifetime but leaves issue alive at testator's death.

28.[1] * * * * Where any person, being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately

[1] The words "And it is hereby enacted, that" in ss. 25 to 28 were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

after the death of the testator, unless a contrary intention shall appear by the will.

Saving of wills of soldiers and seamen.

29.[1] * * * * Notwithstanding anything in this Act contained, any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Act.

30. [*Saving of provisions of Act XX of 1837.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Saving of wills made before 1st February, 1839, and of certain estates.

31.[1] * * * * This Act shall not extend to any will made before the first day of February in the year of our Lord 1839, and every will re-executed or re-published or revived by any codicil shall, for the purposes of this Act, be deemed to have been made at the time at which the same shall be so re-executed, re-published or revived; and this Act shall not extend to any estate *pur autre vie* of any person who shall die before the first day of February in the year of our Lord 1839.

ACT No. XXIX OF 1839[2].

[*16th December, 1839.*]

An Act for the Amendment of the Law relating to Dower.

Preamble.

1. WHEREAS it is expedient to extend the amendments in the English

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[1] The words "And it is hereby enacted, that" in ss. 29 and 31 were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[2] Short title, "The Dower Act, 1839." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

The whole Act, except as to marriages contracted before 1st January, 1866, was repealed by the Repealing Act, 1868 (8 of 1868).

As to dower when the marriage was contracted before the 1st January, 1886, the Act has been declared, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, to be in force in the whole of British India, except as regards the Scheduled Districts. [For Act 15 of 1874, *see* General Acts, Vol. II.]

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), General Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

West Jalpáiguri	*See* Gazette of India, 1881, Pt. I, p. 74.	
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum,, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum . .	Ditto	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzápur District . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I. p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Peshawar and Kohát now form the North-West Frontier Province, see Gazette of*		

law of dower contained in the [1]Statute 3rd and 4th William IV, Chapter CV, to the territories of the East India Company in cases which, but for the passing of this Act, would be governed by the English law of dower as it existed previously to the passing of the aforesaid Statute; 3 & 4 Will. 4, c. 105.

Interpretation.

It is hereby enacted that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows; that is to say, the word "land" shall extend to messuages, and all other hereditaments, whether corporeal or incorporeal (except such as are not liable to dower), and to any share thereof; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing.

Widows to be entitled to dower out of equitable estates.

2.[2] * * * * When a husband shall die, beneficially entitled to any land for an interest which shall not entitle his widow to dower out of the same at law, and such interest, whether wholly equitable, or partly legal and partly equitable, shall be an estate of inheritance in possession, or equal to an estate of inheritance in possession (other than an estate in joint-tenancy), then his widow shall be entitled in equity to dower out of the same land.

Seisin shall not be necessary to give title to dower.

3.[2] * * * * When a husband shall have been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the same if he had recovered possession thereof, she shall be entitled to dower out of the same although her husband shall not have recovered possession thereof: Provided that such dower be sued for or obtained within the period during which such right of entry or action might be enforced.

No dower out of estates disposed of.

4.[2] * * * No widow shall be entitled to dower out of any land which shall have been absolutely disposed of by her husband in his lifetime, or by his will.

India, 1901, Pt. I, p. 857, and ibid, *1902, Pt. I, p. 575;* but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3),

Punjab and N.-W. Code) . *See* Gazette of India, 1886, Pt. I, p. 48.
The District of Sylhet . . Ditto 1879, Pt. I, p. 631.
The rest of Assam (except the North Lushái Hills) . . Ditto 1897, Pt. I, p. 299.

The Scheduled Districts in Ganjam and Vizagapatam, *see* Fort. St. George Gazette, 1898, Pt. I, p. 666, and Gazette of India, 1898, Pt. I, p. 870.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the Scheduled Districts of Kumáon and Garhwál. *See* Gazette of India, 1876, Pt. I, p. 606.

It has been declared, by notification under s. 5 (*b*) of the same Act, not to be in force in the Scheduled District of Lahaul. *See* Gazette of India, 1886, Pt. I, p. 301.

[1] Short title, "The Dower Act, 1833." *See* the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

[2] The words "And it is hereby further enacted, that" in ss. 2 to 4 were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

Priority to partial estates, charges and specialty debts.

5.[1] * * * All partial estates and interests, and all charges created by any disposition or will of a husband, and all debts, incumbrances, contracts and engagements to which his land shall be subject or liable, shall be valid and effectual as against the right of his widow to dower.

Dower may be barred by a declaration in a deed.

6.[1] * * * A widow shall not be entitled to dower out of any land of her husband, when in the deed by which such land was conveyed to him, or by any deed executed by him, it shall be declared that his widow shall not be entitled to dower out of such land.

or by a declaration in the husband's will.

7.[1] * * * * A widow shall not be entitled to dower out of any land of which her husband shall die wholly or partially intestate when by the will of her husband, duly executed for the devise of freehold estates, he shall declare his intention that she shall not be entitled to dower out of such land or out of any of his land.

Dower shall be subject to restrictions.

8.[1] * * * The right of a widow to dower shall be subject to any conditions, restrictions or directions which shall be declared by the will of her husband duly executed as aforesaid.

Devise of real estate to the widow shall bar her dower.

9.[1] * * * Where a husband shall devise any land out of which his widow would be entitled to dower if the same were not so devised, or any estate or interest therein, to or for the benefit of his widow, such widow shall not be entitled to dower out of or in any land of her said husband, unless a contrary intention shall be declared by his will.

Bequest of personal estate to the widow shall not bar her dower.

10.[1] * * * * No gift or bequest made by any husband to or for the benefit of his widow of or out of his personal estate, or of or out of any of his land not liable to dower, shall defeat or prejudice her right to dower unless a contrary intention shall be declared by his will:

Agreement not to bar dower may be enforced.

11. Provided always,[2] * * * * that nothing in this Act contained shall prevent any Court of Equity from enforcing any covenant or agreement entered into by or on the part of any husband not to bar the right of his widow to dower out of his lands or any of them.

Legacies in bar of dower still entitled to preference.

12.[1] * * * Nothing in this Act contained shall interfere with any rule of equity or of any Ecclesiastical Court by which legacies bequeathed to widows in satisfaction of dower are entitled to priority over other legacies.

13. [*Certain dowers abolished.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Act not to take effect before the 1st July, 1840.

14.[1] * * * This Act shall not extend to the dower of any widow who shall have been or shall be married on or before the first day of July one thousand eight hundred and forty, and shall not give to any will, deed, contract, engagement or charge executed, entered into or created before the said first day of July one thousand eight

[1] The words " And it is hereby further enacted, that " in ss. 5 to 10 and 12 and 14 were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[2] The words " and it is hereby further enacted " were repealed by Act 12 of 1891.

hundred and forty the effect of defeating or prejudicing any right to dower.

Saving of certain rights and jurisdiction.

15.[1] * * * This Act shall not be construed to affect any right of property in land otherwise than by modifying the law of dower in cases governed by the English law of dower, or to extend or alter the jurisdiction of any of Her Majesty's Courts of Justice.

ACT No. XXX OF 1839[2].

[*16th December, 1839.*]

An Act for the Amendment of the Law of Inheritance.

Preamble.

1. WHEREAS it is expedient to extend the amendments in the English

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[1] The words "And it is hereby provided that" were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[2] Short title, "The Inheritance Act, 1839." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

The whole Act, except as to intestacies occurring before 1st January, 1866, was repealed by Act 8 of 1868.

As to inheritance, where descent took place before 1st January, 1866, the Act has been declared, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, to be in force in the whole of British India, except as regards the Scheduled Districts. [For Act 15 of 1874, *see* Genl. Acts, Vol. II.]

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

West Jalpáiguri	*See* Gazette of India, 1881, Pt. I, p. 74.	
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum and Pargana Dhálbhum and the Kolhán in the District of Singbhum . .	Ditto	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzápur District . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar . . .	Ditto	1879, Pt. I. p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Peshawar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575;* but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N.-W. Code) . .	Ditto	1886, Pt. I, p. 48.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.

3 & 4 Will. 4, c. 106.

law of inheritance contained in the [1] Statute 3rd and 4th William IV, Chapter CVI, to the territories of the East India Company in cases which, but for the passing of this Act, would be governed by the English law of inheritance as it existed previously to the passing of the aforesaid Statute;

"Interpretation."

It is hereby enacted that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows; (that is to say,)

"Land."

the word "land" shall extend to messuages, and all other hereditaments, whether corporeal or incorporeal, and whether freehold or of any other tenure, and to money to be laid out in the purchase of land, and to chattels and other personal property transmissible to heirs, and also to any share of the same hereditaments and properties or any of them, and to any estate of inheritance or estate for any life or lives, or other estate transmissible to heirs, and to any possibility, right or title of entry or action, and any other interest capable of being inherited, and whether the same estates, possibilities, rights, titles and interests, or any of them, shall be in possession, reversion, remainder or contingency;

"The purchaser."

and the words "the purchaser" shall mean the person who last acquired the land otherwise than by descent, or than by any escheat, partition or enclosure, by the effect of which the land shall have become part of or descendible in the same manner as other land acquired by descent;

"Descent."

and the word "descent" shall mean the title to inherit land by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation as where he shall be a child or other issue;

"Descendants."

and the expression "descendants" of any ancestor shall extend to all persons who must trace their descent through such ancestor;

"Person last entitled."

and the expression "the person last entitled to land" shall extend to the last person who had a right thereto, whether he did or did not obtain the possession or the receipt of rents and profits thereof;

"Assurance."

and the word "assurance" shall mean any deed or instrument other than a will by which any land shall be conveyed or transferred at law or in equity;

The rest of Assam (except the North Lushái Hills) . . *See* Gazette of India, 1897, Pt. I, p. 299.

The Scheduled Districts in Ganjam and Vizagapatam, *See* Fort St. George Gazette, 1898, Pt. I, p. 666, and Gazette of India, 1898, Pt. I, p. 870.

It has been declared, by notification under s. 3 (*b*) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul. *See* Gazette of India, 1886, Pt. I, p. 301.

S. 29 of the Trustees' and Mortgagees' Powers Act, 1866 (28 of 1866), is to be read as part of Act 30 of 1839. *See* Act 28 of 1866, s. 29, *infra*.

[1] Short title, "The Inheritance Act, 1833." *See* the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

Number and gender.

and every word importing the singular number only shall extend and be applied by several persons or things as well as one person or thing, and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

Descent shall always be traced from the purchaser, but the last owner shall be considered to be the purchaser, unless the contrary be proved.

2.[1] * * * In every case descent shall be traced from the purchaser, and to the intent that the pedigree may never be carried further back than the circumstances of the case and the nature of the title shall require, the person last entitled to the land shall, for the purposes of this Act, be considered to have been the purchaser thereof, unless it shall be proved that he inherited the same, in which case the person from whom he inherited the same shall be considered to have been the purchaser, unless it shall be proved that he inherited the same, and in like manner the last person from whom the land shall be proved to have been inherited shall in every case be considered to have been the purchaser unless it shall be proved that he inherited the same.

Heir entitled under a will shall take as devisee, and a limitation to the grantor or his heirs shall create an estate by purchase.

3. When any land shall have been devised by any testator who shall die after the first day of July one thousand eight hundred and forty, to the heir or to the person who shall be the heir of such testator, such heir shall be considered to have acquired the land as a devisee and not by descent; and, when any land shall have been limited by any assurance executed after the said first day of July one thousand eight hundred and forty to the person or the heirs of the person who shall thereby have conveyed the same land, such person shall be considered to have acquired the same as a purchaser by virtue of such assurance, and shall not be considered to be entitled thereto as his former estate or part thereof.

Where heirs take by purchase under limitations to the heirs of their ancestors, the land shall descend as if the ancestor had been the purchaser.

4.[1] * * * When any person shall have acquired any land by purchase under a limitation to the heirs or to the heirs of the body of any of his ancestors, contained in an assurance executed after the said first day of July one thousand eight hundred and forty, or under a limitation to the heir or to the heirs of the body of any of his ancestors, or under any limitation having the same effect, contained in a will of any testator who shall depart this life after the said first day of July one thousand eight hundred and forty, then and in any of such cases such land shall descend, and the descent thereof shall be traced, as if the ancestor named in such limitation had been the purchaser of such land.

Brothers, etc., shall trace descent through their parent.

5.[1] * * * No brother or sister shall be considered to inherit immediately from his or her brother or sister, but every descent from a brother or sister shall be traced through the parent.

Lineal ancestor may be heir in preference to collateral persons claiming through him.

6.[1] * * * Every lineal ancestor shall be capable of being heir to any of his issue, and, in every case where there shall be no issue of the purchaser, his nearest lineal ancestor shall be his heir in preference

[1] The words " And it is hereby further enacted, that " in ss. 2 and 4 to 6 were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

to any person who would have been entitled to inherit, either by tracing his descent through such lineal ancestor, or in consequence of there being no descendant of such lineal ancestor, so that the father shall be preferred to a brother or sister, and a more remote lineal ancestor to any of his issue, other than a nearer lineal ancestor or his issue.

The male line to be preferred.

7.[1] * * * * None of the maternal ancestors of the person from whom the descent is to be traced, nor any of their descendants, shall be capable of inheriting until all his paternal ancestors and their descendants shall have failed; and [1] * * no female paternal ancestor of such person, nor any of her descendants shall be capable of inheriting until all his male paternal ancestors and their descendants shall have failed; and [1] * no female maternal ancestor of such person, or any of her descendants, shall be capable of inheriting until all his male maternal ancestors and their descendants shall have failed.

The mother of more remote male ancestor to be preferred to the mother of the less remote male ancestor.

8.[1] * * * * Where there shall be a failure of male paternal ancestors of the person from whom the descent is to be traced, and their descendants, the mother of his more remote male paternal ancestors, or her descendants, shall be the heir or heirs of such person, in preference to the mother of a less remote male paternal ancestor, or her descendants; and where there shall be a failure of male maternal ancestors of such person, and their descendants, the mother of his more remote male maternal ancestor and her descendants shall be the heir or heirs of such person in preference to the mother of a less remote male maternal ancestor and her descendants.

Half blood, if on the part of a male ancestor, to inherit after the whole blood of the same degree; if on the part of a female ancestor, after her.

9.[1] * * * * Any person related to the person from whom the descent is to be traced by the half blood shall be capable of being his heir, and the place in which any such relation by the half blood shall stand in the order of inheritance, so as to be entitled to inherit, shall be next after any relation in the same degree of the whole blood, and his issue, where the common ancestor shall be a male, and next after the common ancestor where such common ancestor shall be a female, so that the brother of the half blood on the part of the father shall inherit next after the sisters of the whole blood on the part of the father and their issue, and the brother of the half blood on the part of the mother shall inherit next after the mother.

After the death of a person attainted, his descendants may inherit.

10.[1] * * * * When the person from whom the descent of any land is to be traced shall have had any relation who, having been attainted, shall have died before such descent shall have taken place, then such attainder shall not prevent any person from inheriting such land who would have been capable of inheriting the same by tracing his

[1] The words " And it is hereby further enacted and declared that " in ss. 7 to 10 and the words " and that " and the word " that " in s. 7 were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

descent through such relation if he had not been attainted, unless such land shall have escheated in consequence of such attainder before the first day of July one thousand eight hundred and forty.

Act not to extend to any descent before 1st July 1840.

11.[1] * * * This Act shall not extend to any descent which shall take place on the death of any person who shall die before the said first day of July one thousand eight hundred and forty.

Limitations made before the 1st July, 1840, to the heirs of a person then living, shall take effect as if the Act had not been made.

12.[1] * * * Where any assurance executed before the said first day of July, one thousand eight hundred and forty, or the will of any person who shall die before that time, shall contain any limitation or gift to the heir or heirs of any person under which the person or persons answering the description of heir shall be entitled to an estate by purchase, then the person or persons who would have answered such description of heir if this Act had not been made shall become entitled by virtue of such limitation or gift, whether the person named as ancestor shall or shall not be living at the time aforesaid.

Saving of certain inheritance and jurisdiction.

13.[1] * * * This Act shall not be construed to affect inheritances of land which are not subject to the English law of inheritance, or to extend or alter the jurisdiction of any of Her Majesty's Courts of Justice.

ACT No. XXXII OF 1839 [2].

[*30th December, 1839.*]

An Act concerning the allowance of Interest in certain cases.

Preamble.

WHEREAS it is expedient to extend to the territories under the Government of the East India Company, as well within the jurisdiction of Her

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[1] The words "And it is hereby further enacted, that" in ss. 11 and 12, and the words "And it is hereby provided that" in s. 13 were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[2] Short title, "The Interest Act, 1839." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has been declared in force in the Arakan Hill District, by s. 3 of the Arakan Hill District Laws Regulation, 1874 (9 of 1874), Bur. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India, 1880, Pt. I, p. 672.
West Jalpáiguri, the Western Dvárs, namely, that portion of the Jalpáiguri Division known as the Western Dvárs, that is, the country lying between the Tistá and Sunkos Rivers in the Jalpáiguri District, the Western Hills of Dárjiling (that is, the Hills west of	

3 & 4 Will. 4, cap. 42.

Majesty's Courts as elsewhere, the provisions of the [1]Statute 3rd and 4th William IV, chapter 42, section 28, concerning the allowance of interest in certain cases;

1. It is, therefore, hereby enacted that, upon all debts or sums certain payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest

Power of Court to allow interest.

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the Tistá River in the District of Dárjiling), the Dárjiling Tarái and the Damson Subdivision of the District of Dárjiling	*See* Gazette of India,	1881, Pt. I, p. 74.
The District of Hazáribágh .	Ditto	1881, Pt. I, p. 507.
The District of Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. 1, p. 44)	Ditto	1881, Pt. I, p. 508.
The District of Mánbhum .	Ditto	1881, Pt. I, p. 509.
The Pargana of Dhálbhum in the District of Singbhum .	Ditto	1881, Pt. I, p. 510.
The Scheduled portion of the Mirzápur District . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar . . .	Ditto	1879, Pt. I. p. 382.
The Scheduled Districts of the Central Provinces . . .	Ditto	1879, Pt. I, p. 771.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575;* but its application has been barred in that part of the Hazára District known as Upper Tanawal by the Hazára (Upper Tanawal) Regulation (2 of 1900 s. 3), (Punjab and N.-W. Code). *See* Gazette of India, 1886, Pt. I, p. 48.		
The District of Lahaul . .	*See* Gazette of India,	1886, Pt. I, p. 301.
The Districts of Kámrup, Naugong, Darrang, Sibságar, Lakhimpur, Goálpára (excluding the Eastern Dvárs) and Cachar (excluding the North Cachar Hills) . .	Ditto	1878, Pt. I, p. 533.
The District of Sylhet . .	Ditto	1879, Pt. 1, p. 631.
The Gáro Hills, the Khási and Jaintiá Hills, the Nága Hills, the North Cachar Hills in the Cachar District and the Eastern Dvárs in the Goálpára District	Ditto	1897, Pt. I, p. 299.

The Scheduled Districts in Ganjam and Vizagapatam. *See* Fort St. George Gazette, 1898, Pt. I, p. 666, and Gazette of India, 1898, Pt. I, p. 870.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

Kumáon and Garhwál . .	*See* Gazette of India,	1876, Pt. I, p. 606.
The Tarái of the Province of Agra	Ditto	1876, Pt. I, p. 505.

[1] Short title, " The Civil Procedure Act, 1833." *See* the Short Titles Act, 1896 (58 & 60 Vict., c. 14).

from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interst will be claimed from the date of such demand until the term of payment: Provided that interest shall be payable in all cases in which it is now payable by law.

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ACT No. X OF 1841. [1]

[*5th July, 1841.*]

An Act for prescribing the Rules to be observed in order that ships or vessels belonging to ports within the territories under the Government of the East India Company, or belonging to Native Princes or States or their subjects, may become entitled to the privileges of British ships under a Proclamation of the Governor General of India in Council made in pursuance of the [1]Statute 3rd and 4th Victoria, Ch. 56.

Preamble.

1. WHEREAS by a Statute passed in the third and fourth years of Her Majesty Queen Victoria,[2] entitled "An Act to regulate the trade of ships built and trading within the limits of the East India Company's Charter," it is enacted "that it shall be lawful for the Governor General of India in Council, by [3] proclamation, to declare that all ships or vessels built or to be built within the limits of the Charter of the East India Company, being owned by Her Majesty's subjects for whom the said Governor General in Council has power to legislate, and belonging, under the Regulations hereinafter provided for, to any ports in the territories under the government of the said Company, shall be deemed to be British ships for all the purposes of trade within the said limits, including the Cape of Good Hope, and the territories and dependencies thereof: Provided that upon such declaration being made the said Governor General in Council shall, and the said Governor General in Council is hereby accordingly empowered to, make Regulations, to be enforced by suitable penalties, concerning the registering, licensing and ascertaining the admeasurement of the tonnage and burden, and generally for the trading within the limits aforesaid of such ships or vessels;

3 & 4 Vict., cap. 56.

And whereas it is further enacted in the same Statute as follows, that is to say: "And whereas it may be expedient to admit to similar

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[1] Short title, "The Indian Registration of Ships Act, 1841"—*see* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), General Acts, Vol. II, to be in force in Sind (Gazette of India, 1880, Pt. I, p. 672), Aden (*ib.*, 1879, Pt. I, p. 434) and the District of Sylhet (*ib.*, 1879, Pt. I, p. 631).

Act 11 of 1850 is to be construed with, and taken as part of, Act 10 of 1841—*see* Act 11 of 1850, s. 5, *infra*.

Sections 9 to 16 (both inclusive) of the Indian Merchant Shipping Act, 1859 (1 of 1859), Genl. Acts, Vol. I, do not apply to ships registered under this Act, and trading between ports in India and the coasts of Arabia, when manned exclusively by Asiatics—*see* s. 37 of Act 1 of 1859, *infra*.

[2] This Act has been repealed "as to all Her Majesty's dominions" by the Statute Law Revision Act (No. 2) of 1890 (53 & 54 Vict., c. 51), Sch., Pt. I.

[3] *Infra*.

privileges and advantages any ships or vessels belonging to Native Princes or States in subordinate alliance with, or having subsidiary treaties with, the East India Company, or owned by subjects of any such Princes or States, be it therefore enacted that the Governor General of India in Council may by such Regulations as aforesaid, such Regulations being subject as aforesaid, admit to the privileges and advantages of British ships for the purposes of trade within the limits of the Charter of the said Company, including the Cape of Good Hope, and the territories and dependencies thereof, or to any of such privileges and advantages, any ships or vessels belonging to such Princes or States, or any of them, or owned by subjects of any such Princes or States; but any such Regulations shall provide for the granting to such ships or vessels fit and convenient licenses or passes, and generally for the trading within the limits aforesaid of such ships or vessels";

And whereas in pursuance of such enactments it is expedient to frame such Regulations as are mentioned therein, the compliance with which shall be required in order that ships or vessels may be deemed British ships, or be admitted to the privileges and advantages of British ships under such Proclamation as aforesaid;

Ships to be registered.

It is hereby enacted that no ship or vessel shall be deemed a British ship under such Proclamation as aforesaid (except as regards ships or vessels registered before the passing of this Act, or having a pass at the time of passing thereof) unless the person or persons claiming property therein shall have caused the same to have been registered at some one of the ports hereinafter mentioned within the territories of the East India Company, and shall have obtained a certificate of such registry from the person or persons authorized to make such registry and grant such certificate as hereinafter directed, the form of which certificate shall be as follows:—

Certificate of registry.

"This is to certify that in pursuance of the Act No. X of 1841 of the Governor General of India in Council (here insert the names and occupation and residence of subscribing owners) having made and subscribed the declaration required by the said Act and having declared that (he or they) together with (names, occupations and residence of non-subscribing owners) (is or are) sole owner or owners, in the proportions specified on the back hereof, of the ship or vessel called the (ship's name) of (place at which the vessel shall be registered) which is of the burthen of (number of tons), and whereof (master's name) is master, and that the said ship or vessel was (when and where built) and (name and employment of Surveying-officer), having certified to us, that the said ship or vessel has (number) decks and (number) masts, that her (here insert the measurement as ascertained by the rules

hereinafter mentioned), that she is (how rigged) rigged with a (standing or running) bowsprit, is (description of stern) sterned, (carvel or clincher) built, has (whether any or no) gallery, and (kind of head, if any) head: and the said subscribing owners having consented and agreed to the above description, the said ship or vessel called the (name) has been duly registered at the port of (name of port). Certified under our hands at the custom-house, in the said port of (name of port), this (date) day of (name of month) in the year (words at length).

(Signed)————, *Collector or Registrar of Shipping.*"

And on the back of such certificate of registry there shall be an account of the parts or shares held by each of the owners mentioned and described in such certificate, in the form and manner following:—

Names of several owners within mentioned	Numbers of shares held by each owner.
Name	Thirty-two.
Name	Sixteen.
Name	Eight.
	etc., etc.

(Signed)————, *Collector.*

2. [1] * * * * The ports at which registration shall be made shall be the ports of Calcutta, Madras, Bombay [2]* and such other places subordinate to the Local Governments of India as such Governments respectively may, from time to time,[3] declare to be registering ports under this Act: **Ports of registry.**

Provided that ships or vessels built at any place other than any of such ports shall be allowed to make their first voyage to any of such ports, being the ports at which it is intended they shall be registered under a certificate to be granted by the principal British officer at the place where the ship is built, or if there be no British officer in authority there, then by three merchants of such place, which certificate shall contain all the particulars with regard to the ownership and description of the ships or vessels contained in a certificate of registry, and shall specify the ports at which it is intended that they shall respectively be

[1] The words " And it is hereby enacted, that " in s. 2 were repealed by the Repealing Act, 1874 (16 of 1874).

[2] The word " Singapore " was repealed by the Indian Registration of Ships Act, 1891 (7 of 1891), s. 1, Genl. Acts, Vol. IV.

[3] For Ports declared to be Ports of Registry by Government of—
(1) Bombay, *see* Bom. R. & O., Vol. I, p. xix.
(2) Burma, *see* Bur. R. M., Vol. I.
(3) Madras, *see* Mad. R. & O., Vol. I.

registered, and which certificate shall have all the effect of a certificate of registry under this Act, during the first voyage from the place of building to the ports at which the ships or vessels respectively shall be afterwards registered:

Provided that such ships or vessels so proceeding on their first voyage as aforesaid shall be deemed British ships only whilst duly prosecuting such first voyage for the purpose of registry, and, if they be not registered within a reasonable time after their arrival at the port of registry, the owner or owners, or master or other person having or taking the command or charge of such ship or vessel, shall be liable, [1][on conviction before a Presidency Magistrate or a Magistrate of the first class,] to a penalty not exceeding five thousand rupees.

Registrars.

3.[2] * * * The persons authorized to make such registry, and to grant such certificates as aforesaid, shall be [3][such persons] as the Local Governments may, from time to time,[4] appoint for the ports under their respective Presidencies.

Book of registry.

4.[2] * * * At every port where registry shall be made in pursuance of this Act a book shall be kept by the registering-officer, in which all the particulars contained in the form of the certificate of the registry hereinbefore directed to be used shall be duly entered; and every registry shall be numbered in progression, beginning such progressive numeration at the commencement of each and every year. And such registering-officer shall forthwith, or within one month at the furthest, send to the Government of the Presidency to which he is subordinate a true and exact copy, together with the number of every certificate which shall be by him so granted.

Declaration.

5.[2] * * * * No registry shall henceforth be made or certificate be granted, until the following declaration be made or subscribed before the registering-officer by the owner or major part of the owners of the ship or vessel required to be registered:—

> "I, A. B., of (place of residence and occupation) do truly declare that the ship or vessel (name) of (port or place) whereof (master's name) is at present master, being (kind of build,

[1] These words were substituted for the words "on information in any Court of Her Majesty or the East India Company by the Advocates-General of the respective Presidencies" by the Indian Merchant Shipping Act, 1883 (5 of 1883), s. 38, Genl. Acts, Vol. III.

[2] The words "And it is hereby enacted, that" in ss. 3, 4 and 5 were repealed by the Repealing Act, 1874 (16 of 1874).

[3] These words were substituted for the original words and figures "the persons now authorized to make registry of ships or vessels under the Statute 3 and 4 W. 4, Ch. 55, and such other or different persons" by the Indian Registration of Ships Act (1841) Amendment Act, 1891 (7 of 1891), s. 2, Genl. Acts, Vol. IV.

[4] For persons appointed in—

(1) Bombay, *see* Bom. R. & O., Vol. I, p. xix.
(2) Burma, *see* Bur. R. M., Vol. I.
(3) Madras, *see* Mad. R. & O., Vol. I, p. ix.

burthen, et cetera, as described in the certificate of the surveying-officer) was (when and where) built, and that I, the said (A. B.), and the other owners (names and occupations, if any, and where they respectively reside), am (or are) sole owner (or owners) of the said vessel, and that no other person or persons whatever hath or have any right, title, interest, share or property therein or thereto; and that I, the said (A. B.), and the said other owners (if any), am (or are) truly and *bonâ fide* a subject (or subjects) of Her Majesty for whom the Governor General of India in Council has power to legislate, and that no person not being subject as aforesaid, directly or indirectly, hath any share or part interest in the said ship or vessel:"

Provided that, if the registering-officer shall see occasion to doubt the truth of any of the facts contained in the above declaration, he shall not deem such declaration to be conclusive, but may refuse the registry or certificate, and his discretion exercised in this behalf shall be subject only to an appeal to the Local Government to which he is subordinate.

Further declaration by owners who attend.

6.[1] * * * * In case the required number of joint owners of any ship or vessel shall not personally attend to make and subscribe the declaration hereinbefore directed to be made and subscribed, then and in such case such owner or owners as shall personally attend and make and subscribe the declarations aforesaid shall further declare that the part owner or part owners of such ship or vessel then absent is or are not resident within twenty miles of such port or place, and hath or have not to the best of his or their knowledge or belief wilfully absented himself or themselves in order to avoid the making the declaration hereinbefore directed to be made and subscribed, or is or are prevented by illness from attending to make and subscribe the said declaration.

Measurement to be made.

7. And in order to enable the registering-officer to grant a certificate truly and accurately describing every ship or vessel to be registered in pursuance of this Act, and also to enable all other officers of Customs, on due examination, to discover whether any such ship or vessel is the same with that for which a certificate is alleged to have been granted, it is hereby enacted that—

previous to the registering or granting of any certificate of registry as aforesaid some one or more person or persons [2]appointed by the Local Governments respectively, taking to his or their assistance, if he or they shall judge it necessary, one or more person or persons, skilled in the building and admeasurement

[1] The words "And it is hereby enacted, that" in s. 6 were repealed by the Repealing Act, 1874 (16 of 1874).

[2] *See* the fourth footnote (*2*) as to Burma on p. 24, *supra*.
As to Bombay with regard to Aden, *see* Bom. R. & O., Vol. I, p. xix.

of ships, shall go on board of every such ship or vessel that is to be registered, and shall strictly and accurately examine and admeasure every such ship or vessel as to all and every particular contained in the form of the certificate hereinbefore directed in the presence of the master, or of any other person who shall be appointed for that purpose on the part of the owner or owners, or in his or their absence by the said master, and shall deliver a true and just account in writing of all such particulars of the build, description and admeasurement of every such ship or vessel as are specified in the form of the certificate above recited to the officer authorized to make such registry and grant such certificate of registry as aforesaid; and the said master or other person attending on the part of the owner or owners is hereby required to sign his name also to the certificate of such surveying or examining officer, in testimony of the truth thereof, provided such master or other person shall consent and agree to the several particulars set forth and described therein.

Certificate of surveying-officer.

8.[1] The certificate of the surveying-officer shall be in the form in the schedule to this Act or in such [2] other form as the Governor General in Council may from time to time prescribe; and such certificate shall be delivered to the registering-officer before registry.

Measurement of tonnage for purpose of registry.

9.[1] Subject to the provisions of section 70 of [3]Act I of 1859 (*An Act for the amendment of the law relating to Merchant Seamen*) as amended by section 9 of the [4] Indian Merchant Seamen's Act, 1876, the tonnage of a ship or vessel required by law to be registered shall, previous to her being registered, be measured and ascertained according to such of the rules and orders for the time being in force in and under the [5] Merchant Shipping Act, 1854, as amended by subsequent Acts including the Merchant Shipping (Tonnage) Act, 1889, as apply to measurement of tonnage for the purpose of registry.

XIII of 1876.

17 & 18 Vict., c. 104. 52 & 53 Vict., c. 43.

Measurement of tonnage for purpose other than registry.

10.[1] Subject to the provisions referred to in the last foregoing section, the tonnage of a ship or vessel requiring to be measured for any purpose other than registry shall be measured and ascertained according

[1] Ss. 8 to 12 here printed were substituted for the original ss. 8 to 12 by s. 3 of the Indian Registration of Ships Act (1841) Amendment Act, 1891 (7 of 1891), Genl. Acts, Vol. IV. The original sections dealt with rules of measurement as to depth, length, breadth, tonnage, etc., mode of measurement for steam-vessels; new registry requisite upon every alteration in the cubical contents of engine-room; rules of measurement as to ships having their cargoes on board; and registered tonnage to be carved in figures on every vessel prior to registry.

[2] For form prescribed by the Governor General in Council instead of that in the Schedule to the Act, *see* Genl. Stat. R. & O., Vol. I.

[3] *Infra.*

[4] Genl. Acts, Vol. II.

[5] *See* now the Merchant Shipping Act, 1894, Coll. Stats. Ind., Vol. II, by which these Acts have been repealed and their provisions re-enacted.

to such of the rules and orders for the time being in force in and under the [1]Merchant Shipping Act, 1854, amended as aforesaid, as apply to measurement of tonnage for a purpose other than registry.

17 & 18 Vict., c. 104.

Substitution of Governor General in Council for Board of Trade.

11.[2] The rules and orders referred to in section 9 and section 10 of this Act shall, in their application to measurement of tonnage for the purposes of this Act, or of any enactment, rule or order referring to this Act, be read and construed as if the Governor General in Council were therein named instead of the Board of Trade or the authority for which the Board of Trade has been substituted by section 3 of the [1]Merchant Shipping Act, 1872.

35 & 36 Vict. c. 73.

Marking of register tonnage on ship or vessel.

12.[2] The true amount of the register tonnage of every ship or vessel to be measured and ascertained according to the rules and orders referred to in section 9 of this Act shall be deeply carved or cut in figures of at least three inches in length on the main beam of every such ship or vessel prior to her being registered.

13. [*Registration of country craft not exceeding two hundred tons.*] *Rep. by Act XI of 1850.*

Registered tonnage to be repealed in every subsequent register.

14.[3] * * * Whenever the [4][register] tonnage of any ship or vessel shall have been ascertained according to the [5][said rules and orders], such account of [4][register] tonnage shall ever after be deemed the [4][register] tonnage of such ship or vessel, and shall be repeated in every subsequent registry of such ship or vessel, unless it shall happen that any alteration has been made in the form of burthen of such ship or vessel, or it shall be discovered that the [4][register] tonnage of such ship or vessel had been erroneously taken and computed.

Fraudulent use of certificate.

15.[3] * * * If such certificate as aforesaid shall be sold, lent or otherwise disposed of to any person or persons whatever than those for whose use it is granted, or shall be made use of for the service of any other ship or vessel than the ship or vessel for which it is granted, such certificate shall thenceforth be utterly void, and the master or any owner of the ship or vessel who shall be proved to have sold, lent or disposed of such certificate, or made use of the same as aforesaid, or shall have concurred in or been privy to the committing of any such offence, shall be liable,[6]* * [6][on conviction before a Presidency Magistrate or a Magistrate of the first class,] to a penalty not exceeding ten thousand rupees.

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[1] *See* the fifth foot-note on preceding page.

[2] *See* the first foot-note on preceding page.

[3] The words " And it is hereby enacted, that " in ss. 14 and 15 were repealed by the Repealing and Amending Act, 1874 (16 of 1874).

[4] This word was prefixed to the word " tonnage " by s. 4 of the Indian Registration of Ships Act (1841) Amendment Act, 1891), Genl. Acts, Vol. IV.

[5] These words were substituted for the words " rules herein prescribed " by s. 4 of the Indian Registration of Ships Act (1841) Amendment Act, 1891 (7 of 1891), Genl. Acts, Vol. IV.

[6] These words were substituted for the words " on information as aforesaid " by the Indian Merchant Shipping Act, 1883 (5 of 1883), s. 38, Genl. Acts, Vol. III. The words " upon conviction," which occur after the word " liable " in para. 1 and were not affected by this substitution, have been omitted as a redundancy.

And in case such ship or vessel shall be lost or taken by the enemy, burnt or broken up, or otherwise prevented from returning to the port at which she is registered, or shall on any account have lost and forfeited the privileges of a British ship, or shall have been seized and legally condemned for illicit trading, or shall have been taken in execution for debt and sold by due process of law, or shall have been sold to the Crown, [1] * * * * or shall under any circumstances have been registered *de novo*, the certificate, if preserved, shall be delivered up, within one month after the arrival of the master in any port or place in the territories of the East India Company, to the registering-officer at such port, in default whereof the master or any of the owners shall be liable, [2][on conviction before a Presidency Magistrate or a Magistrate of the first class,] to a penalty not exceeding five thousand rupees.

And if any person not being such subject as aforesaid shall purchase or otherwise become entitled to the whole or to any part or share of or any interest in such ship or vessel, and the same shall be within the limits of any port of the territories of the East India Company, then and in such case the certificate of registry shall, within seven days after such purchase or transfer of property in such ship or vessel, be delivered up to the registering-officer at such port, and if such ship or vessel shall be in any place not within the territories of the East India Company when such purchase or transfer of property shall take place, then the certificate shall be delivered up within fourteen days after the arrival of such ship or vessel or of the master thereof in any port of the territories of the East India Company to the registering-officer at such port, in default whereof the master or any of the owners shall be liable on conviction before any Justice of the Peace in a penalty not exceeding five thousand rupees recoverable in manner provided by [3][the law for the time being in force for the recovery of fines imposed by Criminal Courts].

Change of master.

16.[4] * * * When and so often as the master of any ship or vessel registered in manner hereinbefore directed shall be changed, the master or owner of such ship or vessel shall deliver to the person or persons hereinbefore authorized to make such registry and grant such certificates of registry at the port where such change shall take place, if it be a port within the territories of the East India Company, the certificate of registry belonging to such ship or vessel, who shall there-

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[1] The words " or the East India Company " were repealed by s. 5 of the Indian Registration of Ships Act (1841) Amendment Act, 1891 (7 of 1891), Genl. Acts, Vol. IV.

[2] *See* sixth foot-note on preceding page.

[3] These words were substituted for the words and figures " Act No. 2 of 1839 " by s. 5 of the Indian Registration of Ships Act (1841) Amendment Act, 1891 (7 of 1891), Genl. Acts, Vol. IV.

[4] The words "And it is hereby enacted, that " in ss. 16 and 17 were repealed by the Repealing Act, 1874 (16 of 1874).

upon endorse and subscribe a memorandum of such change, and shall forthwith give notice of the same to the proper officer of the port or place where such ship or vessel was last registered pursuant to this Act, who shall likewise make a memorandum of the same in the book of registers which is hereby directed and required to be kept, and shall forthwith give notice thereof in like manner as of the original entry. But if the change do not take place in any port within the territories of the East India Company, then such delivery, memorandum and endorsement shall be made and notice given at the first port within the territories of the East India Company at which the new master shall arrive after such change. In default of which delivery of the certificate such new master or any of the owners shall be liable, on conviction before a Justice of the Peace, to a penalty not exceeding five thousand rupees recoverable as aforesaid.

Name of ship.

17.[1] * * * It shall not be lawful for any owner or owners of any ship or vessel to give any name to such ship or vessel other than that by which she was first registered in pursuance of this Act, and [2] * the owner or owners of all and every ship or vessel which shall be so registered shall, before such ship or vessel, after such registry, shall begin to take in any cargo, paint or cause to be painted, in white or yellow letters of a length of not less than four inches upon a black ground on some conspicuous part of the stern, the name by which such ship or vessel shall have been registered pursuant to this Act, and the port to which she belongs, in a distinct and legible manner; and shall so keep and preserve the same.

And [2]* if such owner or owners, or master or other person having or taking the charge or command of such ship or vessel, shall permit such ship or vessel to begin to take in cargo before the name of such ship or vessel has been so painted as aforesaid, or shall wilfully alter, erase, obliterate or in any wise hide or conceal, or cause or procure or permit the same to be done, or shall in any written or printed paper or other document describe such ship or vessel by any name other than that by which she was first registered pursuant to this Act, or shall verbally describe or cause or procure or permit such ship or vessel to be described by any other name to any officer or officers of Revenue in the due execution of his or their duty, then and in every such case the certificate of registry shall thenceforth become utterly void, and such owner or owners, or master or other person having or taking the charge or command of such ship or vessel, shall be liable, [3][on conviction before a Presidency Magistrate or a Magistrate of the

[1] *See* fourth foot-note on preceding page.

[2] The word " that " was repealed by s 6 (*1*) of the Indian Registration of Ships Act (1841) Amendment Act, 1891 (7 of 1891), Genl. Acts, Vol. IV.

[3] These words were substituted for the words " on information as aforesaid " by s. 38 of the Indian Merchant Shipping Act, 1883 (5 of 1883), Genl. Acts. Vol. III.

first class,] to a penalty not exceeding ten thousand rupees [1][recoverable as aforesaid].

Certificate of building.

18.[2] * * * * All and every person and persons who shall apply for a certificate of the registry of any ship or vessel shall, and they are hereby required to, produce to the person or persons authorized to grant such certificate a true and full particular under the hand of the builder of such ship or vessel, or in case the want of such certificate can be satisfactorily accounted for, then to produce other sufficient evidence of the proper denomination, and of the time when, and the place where, such ship or vessel was built, and also an exact account of the tonnage of such ship or vessel, and shall also make and subscribe a declaration before the person or persons hereinbefore authorized to grant such certificate that the ship or vessel for which such certificate is required is the same with that which is so described by the builder as aforesaid.

Certificate lost or mislaid.

19.[2] * * * * If the certificate of registry of any ship or vessel shall be lost or mislaid, so that the same cannot be found or obtained for the use of such ship or vessel when needful, and proof thereof shall be made to the satisfaction of the Registering-officer of the port at which theship is registered, such officer shall and may, where the certificate shall have been lost or mislaid, permit such ship or vessel to be registered *de novo*, and a certificate thereof to be granted:

Provided always that if such ship or vessel be absent and far distant from the port to which she belongs, or by reason of the absence of the owner or owners, or of any other impediment, registry of the same cannot then be made in sufficient time, such Registering-officer shall and may grant a license for the present use of such ship or vessel, which license shall for the time and to the extent specified therein, and no longer, be of the same force and virtue as a certificate of registry granted under this Act:

Provided always that, if the certificate of registry shall at any time afterwards be found, the same shall be forthwith delivered to the proper Officers of Customs to be cancelled, and that no illegal use be made of the same, in default whereof the original certificate and the renewed certificate and license shall thenceforth become utterly void, and any person wilfully detaining the certificate so required to be cancelled, or making any illegal use thereof, shall be liable on conviction before any Justice in a penalty not exceeding five thousand rupees recoverable as aforesaid.

Detention of certificate.

20. And whereas it is not proper that any person under any pretence whatever should detain the certificate of registry of any ship or vessel, or

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[1] These words were added by s. 6 (2) of the Indian Registration of Ships Act (1841) Amendment Act, 1891 (7 of 1891), Genl. Acts, Vol. IV.

[2] The words "And it is hereby enacted, that" in ss. 18 and 19 were repealed by the Repealing Act, 1874 (16 of 1874).

hold the same for any purpose other than the lawful use and navigation of the ship or vessel for which it was granted, it is therefore hereby enacted that—

in case any person who shall have received or obtained by any means or for any purpose whatever the certificate of the registry of any such ship or vessel (whether such person shall claim to be the master or to be the owner or one of the owners of such ship or vessel, or not,) shall wilfully detain and refuse to deliver up the same to the proper Officers of Customs, for the purposes of such ship or vessel, as occasion shall require, or to the person or persons having the actual command, possession and management of such ship or vessel as the ostensible and reputed master, or as the ostensible and reputed owner or owners thereof, it may and shall be lawful to and for any such last-mentioned person to make complaint on oath of such detainer and refusal to any Justice of the Peace residing near to the place where such detainer and refusal shall be;

and on such complaint the said Justice shall and is hereby required, by warrant under his hand and seal, to cause the person so complained against to be brought before him to be examined touching such detainer and refusal;

and if it shall appear to the said Justice on examination of such person or otherwise that the said certificate of registry is not lost or mislaid, but is wilfully detained by the said person, such person shall be subject on conviction before such Justice to a penalty not exceeding one thousand rupees, recoverable as aforesaid, and the said Justice shall, and he is hereby required to, certify the aforesaid detainer, refusal and conviction to the person or persons who granted such certificate of registry for such ship or vessel, who shall on the terms and conditions of law being complied with make registry of such ship or vessel *de novo*, and grant a certificate thereof conformably to law, notifying on the back of such certificate the ground upon which the ship or vessel was so registered *de novo;*

and if the person who shall have detained and refused to deliver up such certificate of registry as aforesaid, or shall be verily believed to have detained the same, shall have absconded so that the said warrant of the Justice cannot be executed upon him, and proof thereof shall be made to the satisfaction of the Registering-officer of the port at which the ship or vessel was registered, it shall be lawful for the said officer to permit such ship or vessel to be registered *de novo*, or otherwise, in his discretion, to grant a license for the present use of such ship or vessel in like manner as is hereinbefore provided in the case wherein the certificate of registry is lost or mislaid.

Registration *de novo.*

21. [1] * * * * If any ship or vessel, after she shall have been registered pursuant to the directions of this Act, shall in any manner whatever be altered so as not to correspond with all the particulars contained in the certificate of her registry, or if any alteration shall take place in the ownership of any ship or vessel, or of any share or shares thereof, in such cases such ship or vessel shall be registered *de novo* in manner hereinbefore required as soon as she returns to the port to which she belongs, or to any other port within the territories of the East India Company, on failure whereof such ship or vessel shall be deemed to be a ship or vessel not duly registered, and any person making use of a certificate for the purposes of any ship or vessel which has been granted in respect of the same, after the same ought to have been registered *de novo*, shall be liable on conviction before any Justice to a penalty not exceeding five thousand rupees recoverable as aforesaid.

Testimony of Registering-officers.

22. And whereas great inconvenience may arise from the Registering-officers being served with subpœnas requiring them to bring with them and produce, on trials in Courts of Law relative to the ownership of vessels or otherwise, the declarations required to be taken by the owners thereof prior to the registering thereof, and the books of registry, or copies or extracts therefrom; and whereas it would tend much to the despatch of business if the attendance of such Registering-officers with the same upon such trials were dispensed with, it is therefore hereby enacted that—

the Registering-officer at any port or place, and the person or persons acting for them respectively, shall upon every reasonable request by any person or persons whomsoever, produce and exhibit for his, her or their inspection and examination any declaration made by any such owner or owners, and also any register or entry in any book or books of registry required, and shall upon every reasonable request by any person or persons whomsoever, permit him, her or them to take a copy or copies, or an extract or extracts thereof respectively, and that the copy and copies of any such oath or declaration, registry or entry shall, upon being proved to be true copy or copies thereof respectively, be allowed and received as evidence upon every trial at law, without the production of the original or originals, and without the testimony or attendance of any Registering-officer, or other person or persons acting for them respectively, in all cases, as fully and to all intents and purposes as such original or originals, if produced by any Registering-officer, or other person or persons acting for them, could or might legally be admitted or received in evidence.

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[1] The words "And it is hereby enacted, that" in s. 21 were repealed by the Repealing Act, 1874 (16 of 1874).

False declaration.

Falsifying documents.

23. [1] * * * * If any person or persons shall falsely make declaration to any of the matters hereinbefore required to be verified by declaration, or if any person or persons shall counterfeit, erase, alter or falsify any certificate or other instrument in writing required or directed to be obtained, granted or produced by this Act, or shall knowingly or wilfully make use of any certificate or other instrument so counterfeited, erased, altered, falsified, or shall wilfully grant such certificate or other instrument in writing, knowing it to be false, such person or persons shall for every such offence be liable, [2][on conviction before a Presidency Magistrate or a Magistrate of the first class], to a penalty not exceeding ten thousand rupees [3][recoverable as aforesaid], and, if any such offence be committed by the owner of any ship or vessel, the certificate of such ship or vessel shall thenceforth be wholly void.

Ships of Native States.

24. [1] * * * * When any ship or vessel duly registered under this Act, or sailing under the British Navigation Law, shall come to be owned by a Native Prince or State, or by any subject of such Native Prince or State as aforesaid, it shall be lawful [4][for a Local Government] to continue to such ship or vessel the privileges and advantages of a British ship for the purposes aforesaid by a pass to be [5] * * * * * subscribed by a Secretary to Government, stating the voyage, or voyages for which the same is to have effect, and the period for which it is to last; and it shall be lawful [4][for a Local Government] to issue a similar pass conferring the privileges and advantages of a British ship for the purposes aforesaid under this Act to any ship or vessel[6] built within the dominions of such Native Prince or State, and owned by such Prince or State or by any of their subjects: Provided always that the ships belonging to Native Princes or States or their subjects in respect of which passes may be granted under this Act shall, during the voyage or voyages, or the period for which any such pass shall be granted, be commanded by a subject of Her Majesty for whom the Governor General in Council has power to legislate.

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[1] The words " And it is hereby enacted, that " in ss. 23 & 24 were repealed by the Repealing Act, 1874 (16 of 1874).

[2] These words were substituted for the words " on conviction upon information as aforesaid " by s. 38 of the Indian Merchant Shipping Act, 1883 (5 of 1883), Genl. Acts, Vol. III.

[3] These words were inserted by s. 7 of the Indian Registration of Ships Act (1841) Amendment Act, 1891 (7 of 1891), Genl. Acts, Vol. IV.

[4] These words were substituted for the words " for the Governor of Fort William in Bengal, or for the Governor in Council of any Presidency," by s. 8 of the Indian Registration of Ships Act (1841) Amendment Act, 1891 (7 of 1891), Genl. Acts, Vol. IV.

[5] The words " issued under the Company's seal and " were repealed by s. 8 of the Indian Registration of Ships Act (1841) Amendment Act, 1891 (7 of 1891), Genl. Acts, Vol. IV.

[6] *See* also the Indian Registration of Ships Act (1841) Amendment Act, 1850 (11 of 1850), ss. 2 and 3, *infra*.

Fees.

25. [1] * * * The fees demandable in respect of the granting any certificate or pass under this Act shall be fixed from time to time according to the directions of the Governor General in Council, but so that the same shall not exceed the amount of fees now payable for registering or granting passes to ships or vessels at the different Presidencies.

Ports to which ships belong.

26.[2] * * * All ships or vessels registered under this Act shall be deemed to belong to the ports at which they shall be respectively registered. And all ships or vessels being registered or in respect of which passes may have been granted which are unexpired at the time of passing this Act shall for the purpose of being deemed British ships be deemed to belong to the ports at which they may have been registered, or, when passes shall have been granted which are unexpired, at which such passes may have been respectively granted. And such ships or vessels built and owned as required by the [3]Statute 3 & 4 Vict., Ch. 56, shall continue subject to all the rules in force at the respective Presidencies before the passing of this Act, touching the registering, measurement, granting passes or other requisitions in respect of the same, and shall not be subject to the provisions of this Act, or any provisions of the Statute law, a compliance with which may heretofore have been necessary in order that ships or vessels built and owned as aforesaid might be deemed British ships for the purposes of trade.

Definition of "Local Government."

[4]**27.** The expressions "Local Government", "Local Governments of India" and "Government of the Presidency", as used in this Act, shall be deemed to include, and to have always included, every person who is a "Local Government" as defined in section 2, clause (10), of the [5]General Clauses Act, 1868. I of 1868.

PROCLAMATION.

The Governor General of India in Council hereby declares that all ships and vessels built or to be built within the limits of the Charter of the East India Company (as those limits are defined by the [3] Statute 3rd and 4th of Queen Victoria, Cap. 56, entitled "An Act further to regulate the trade of ships built and trading within the limits of the

[1] The words "And it is hereby enacted, that" were repealed by the Repealing Act, 1874 (16 of 1874).

[2] The words "And it is hereby declared and enacted, that" were repealed by the Repealing Act, 1874 (16 of 1874).

[3] This Act has been repealed "as to all Her Majesty's dominions" by the Statute Law Revision Act (No. 2) of 1890 (53 & 54 Vict., c. 51), Sch., Pt. I.
Act 1891 (7 of 1891), Genl. Acts, Vol. IV.

[4] S. 27 was inserted by s. 9 of the Indian Registration of Ships Act, (1841) Amendment

[5] *See* now the General Clauses Act, 1897 (10 of 1897), s. 3 (*29*), Genl. Acts, Vol. IV, under s. 4 of which the definition of "Local Government" as given in that clause applies to the expression as used in this Act.

East India Company's Charter "), being owned by Her Majesty's subjects for whom the said Governor General in Council has power to legislate, and belonging, under the provisions of the Act passed by the Governor General in Council No. X of 1841, to any ports in the territories under the Government of the East India Company, shall be deemed to be British ships for all purposes of trade within the said limits, including the Cape of Good Hope and the territories and dependencies thereof.

(*The Schedule.*)

[1] THE SCHEDULE.

(*See section 8.*)

ACT X, 1841.

[2] CERTIFICATE OF SURVEY.

Name of Ship.	Port of intended Registry.	Official Number, if there has been any former Registry.

Whether a Sailing or Steam Ship; and, if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.

		Feet.	Tenths.
Number of Decks	Length from fore part of stem, under the bowsprit to the aft side of the head of the stern post		
Number of Masts	Main breadth to outside of plank		
Rigged	Depth in hold from tonnage deck to ceiling at midships		
Stern	Depth in hold from upper deck to ceiling at midships, in the case of three decks and upwards		
Build	Length of engine-room, if any		
Galleries			
Head			
Framework			

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign made.	When made.	Name and address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horse's Power (combined).
			Engines.				
			Boilers.				

[1] This Schedule was added by section 3 of the Indian Registration of Ships Act (1841) Amendment Act, 1891 (7 of 1891), Genl. Acts, Vol. IV.

[2] For form prescribed under section 8 instead of the form here given, *see* Genl. Stat. R. and O., Vol. I.

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTION ALLOWED.		No. of Tons.
Under Tonnage Deck . .		On account of space required for propelling power		
Closed-in spaces above the Tonnage Deck, if any.		On account of spaces occupied by Seamen or Apprentices and appropriated to their use and kept free from goods or stores of every kind not being the personal property of the Crew		
Space or spaces between Decks[1].		These spaces are the following, namely :—		
Poop				
Forecastle				
Round-House				
Other closed-in spaces, if any, as follows:				
		Cubic metres.		
Gross Tonnage . .				
Deduction, as *per contra* . .				
Registered Tonnage .			TOTAL .	

I, the undersigned _____
having surveyed the above-named Ship, hereby certify that the above particulars are true.

Dated at _____
this _____ day of _____
_____ 18 .

_____
Surveyor.

ACT No. XIX OF 1841[1].

[*6th September, 1841.*]

An Act for the protection of moveable and immoveable property against wrongful possession in cases of successions.

WHEREAS much inconvenience has been experienced where persons Preamble.

[1] Short title, " The Succession (Property Protection) Act, 1841." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has been declared in force in the Arakan Hill District (with modifications and with the exception of s. 16), by the Arakan Hill District Laws Regulation, 1874 (9 of 1874), Bur. Code.

It has been extended to Sindh by Bombay Act 12 of 1866, s. 12, Bom. Code, Vol. II.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

The Taluqs of Bhádrachálam and Rakapilli and the Rampa Country . . .	*See* Gazette of India,	1879, Pt. I, p. 630.
Sindh	Ditto	1880, Pt. I, p. 672.
West Jalpáiguri	Ditto	1881, Pt. I, p. 74.

have died possessed of moveable and immoveable property, and the same has been taken upon pretended claims of right by gift or succession; the difficulty of ascertaining the precise nature of the moveable property in such cases, the opportunities for misappropriating such property and also the profits of real property, the delays of a regular suit when vexatiously protracted, and the inability of heirs when out of possession to prosecute their rights, affording strong temptations for the employment of force or fraud in order to obtain possession;

And whereas, from the above causes, the circumstance of actual possession, when taken upon a succession, does not afford an indication of rightful title equal to that of a decision by a Judge after hearing all parties in a summary suit, though such summary suit may not be sufficient to prevent a party removed from possession thereby from instituting a regular suit;

The District of Hazáribágh .	*See* Gazette of India, 1881, Pt. I, p. 507.	
The District of Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44)	Ditto	1881, Pt. I, p. 508.
The District of Manbhum .	Ditto	1884, Pt. I, p. 509.
Pargana Dhálbhum in the District of Singbhum . . .	Ditto	1881, Pt. I, p. 510.
The Scheduled portion of the Mirzápur District . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Peshawar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N.-W. Code*) .	Ditto	1886, Pt. I, p. 48.
The District of Lahaul . .	Ditto	1886, Pt. I, p. 301.
The Scheduled Districts of the Central Provinces	Ditto	1879, Pt. I, p. 771.
Coorg	Ditto	1878, Pt. I, p. 747.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the Scheduled Districts of Kumáon and Garhwál. *See* Gazette of India, 1876, Pt. I, p. 606.

It has been declared, by notification under s. 3 (*b*) of the above-mentioned Act, that Act I of 1846 is not in force in the Scheduled Districts of Ganjam and Vizagapatam, *see* Fort St. George Gazette, 1898, Pt. I, p. 667, and Gazette of India, 1898, Pt. I, p. 872.

A curator appointed under this Act is not to exercise any authority lawfully belonging to a holder of a certificate under Act 27 of 1860 or 7 of 1889 or to an executor or administrator. *See* the Succession Certificate Act, 1898 (7 of 1889), s. 23 (*1*), Genl. Acts, Vol. IV.

And whereas such summary suit, though it will take away many of the temptations which exist for assuming wrongful possession upon a succession will be too tardy a remedy for obviating them all, especially as regards moveable property;

And whereas it may be expedient, prior to the determination of the summary suit, to appoint a curator to take charge of property upon a succession, where there is reason to apprehend danger of misappropriation, waste or neglect, and where such appointment will, in the opinion of the authority making the same, be beneficial under all the circumstances of the case;

And whereas it will be very inconvenient to interfere with successions to estates by the appointment of curators, or by summary suits, unless satisfactory grounds for such proceedings shall appear, and unless such proceedings shall be required by or on behalf of parties giving satisfactory proof that they are likely to be materially prejudiced if left to the ordinary remedy of a regular suit:

Person claiming right by succession to property of deceased may apply for relief against wrongful possession.

1. It is hereby enacted that whenever a person dies leaving property, moveable or immoveable, it shall be lawful for any person claiming a right by succession thereto, or to any portion thereof, to make application to the Judge of the Court of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person or when forcible means of seizing possession are apprehended.

Agent, etc., may apply in behalf of minor, etc.

2.[1] * * * It shall be lawful for any agent, relative or near friend, or for the Court of Wards in cases within their cognizance, in the event of any minor, disqualified or absent person being entitled by succession to such property as aforesaid, to make the like application for relief.

Enquiry made by Judge.

3.[1] * * * The Judge to whom such application shall be made shall, in the first place, enquire by the solemn declaration of the complainant, and by witnesses and documents at his discretion, whether there be strong reasons for believing that the party in possession or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose behalf he applies, is really entitled and is likely to be materially prejudiced if left to the ordinary remedy of a regular suit, and that the application is made *bonâ fide*.

Procedure.

4.[1] * * * In case the Judge shall be satisfied of the existence of such strong ground of belief, but not otherwise, he shall cite the party complained of, and give notice of vacant or disturbed possession by publication, and after the expiration of a reasonable time shall determine summarily the right to possession (subject to regular suit as hereinafter mentioned) and shall deliver possession accordingly: Provided always that the Judge shall have the power to appoint an

Determination or right.

[1] The words "And it is hereby enacted that" in ss. 2 to 4 were repealed by the Repealing Act, 1874 (16 of 1874).

Appointment of officer to secure effects.

officer who shall take an inventory of effects, and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the enquiry necessary for citing the party complained of or not.

Appointment of curator pending determination of suit.

5.[1] * * * In case it shall further appear upon such application and examination as aforesaid that danger is to be apprehended of the misappropriation or waste of the property before the summary suit can be determined, and that the delay in obtaining security from the party in possession or the insufficiency thereof is likely to expose the party out of possession to considerable risk, provided he be the lawful owner; it shall be lawful for the Judge to appoint one or more curators with the powers hereinafter next mentioned, whose authority shall continue according to the terms of his or their respective appointments, and in no case beyond the determination of the summary suit and the confirmation or delivery of possession in consequence thereof: Provided always that, in the case of land, the Judge may delegate to the Collector or to his officer the powers of a curator, and also that every appointment of a curator in respect of any property be duly published.

Powers conferable on curator.

6.[1] * * * The Judge shall have power to authorize such curator either to take possession of the property generally, or until security be given by the party in possession, or until inventories of the property shall have been made, or for any other purpose necessary for securing the property from misappropriation or waste by the party in possession: Provided always that it shall be entirely discretionary with the Judge, whether he shall allow the party in possession to continue in such possession on giving security, or not, and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories, or the securing of deeds or other effects.

Discretion to allow party in possession to continue.

Curator to give security and may receive remuneration.

7.[1] * * * The Judge shall exact from the curator security for the faithful discharge of his trust, and for rendering satisfactory accounts of the same as hereinafter mentioned, and may authorize him to receive out of the property such remuneration as shall appear reasonable, but in no case exceeding five per centum on the personal property and on the annual profits of the real property. All surplus money realized by the curator shall be paid into Court, and invested in public securities for the benefit of the persons entitled thereto upon adjudication of the summary suit: Provided always that, although security shall be required from the curator with all reasonable despatch, and, where it is practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed curator, yet no delay in the taking of security shall prevent the Judge from immediately investing the curator with the powers of his office.

Disposal of surplus.

Curator may be invested with powers before security is taken.

[1] The words "And it is hereby enacted that" in ss. 5 to 7 were repealed by the Repealing Act, 1874 (16 of 1874).

Report from Collector where estate includes revenue-paying land.

8.[1] * * * Where the estate of the deceased person shall consist wholly or in part of land paying revenue to Government, in all matters regarding the propriety of citing the party in possession, of appointing a curator, and of nominating individuals to that appointment, the Judge shall demand a report from the Collector, and the Collector is hereby required to furnish the same. In cases of urgency the Judge may proceed, in the first instance, without such report and he shall not be obliged to act in conformity thereto; but, in case of his acting otherwise than according to such report, he shall immediately forward a statement of his reasons to the Court of Sadr Diwani Adalat, and the Court of Sadr Diwani Adalat, if they shall be dissatisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector.

Institution and defence of suits.

Authority for collection of dues.

9.[1] * * * The curator shall be subject to all orders of the Judge regarding the institution or the defence of suits, and [1] * all suits may be instituted or defended in the name of the curator on behalf of the estate: Provided that an express authority shall be requisite in the sanad of the curator's appointment for the collection of debts or rents; but such express authority shall enable the curator to give a full acquittance for any sums of money received by virtue thereof.

Allowances to apparent owners pending custody by curator.

10.[1] * * * Pending the custody of the property by the curator, it shall be lawful for the Judge to make such allowances to parties having a *primâ facie* right thereto as upon a summary investigation of the rights and circumstances of the parties interested he shall consider that necessity may require, taking, at his discretion, security for the repayment thereof with interest, in case the party shall, upon the adjudication of the summary suit, appear not to be entitled thereto.

Accounts to be filed by curator.

11.[1] * * * The curator shall file monthly accounts in abstract, and at the period of every three months, if his administration last so long, and upon giving up the possession of the property, file a detailed account of his administration to the satisfaction of the Judge.

Inspection of accounts and right of interested party to keep duplicate.

Penalty for default as to accounts.

12.[1] * * * * The accounts of any such curator as is above described shall be open to the inspection of all parties interested; and it shall be competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by such curator; and if it be found that the accounts of any such curator are in arrear, or if they shall be erroneous or incomplete, or if the curator shall not produce them whenever he shall be ordered to do so by the Judge, he shall be liable to a fine not exceeding one thousand rupees for every such default.

Bar to appointment of second cura-

13.[1] * * * After the Judge of any district shall have appointed any curator, such appointment shall preclude the Judge of any

[1] The words "And it is hereby enacted that" at the beginning of ss. 5 to 13 were repealed by the Repealing Act, 1874 (16 of 1874), and the word "that" in s. 9 was repealed by the Repealing Act, 1876 (12 of 1876).

tor for same property.

other district within the same presidency from appointing any other curator, provided the first appointment be in respect of the whole of the property of the deceased. But if the appointment be only in respect of a portion of the property of the deceased, this shall not preclude the appointment within the same presidency of another curator in respect of the residue or any portion thereof: Provided always that no Judge shall appoint a curator or entertain a summary suit in respect of property which is the subject of a summary suit previously instituted under this Act before another Judge; and provided further that, if two or more curators be appointed by different Judges for several parts of an estate, it shall be lawful for the Sadr Diwani Adalat to make such order as it shall think fit for the appointment of one curator of the whole property.

Curators of different parts of property.

Power to appoint sole curator.

Limitation of time for application for curator.

14.[1] * * * This Act shall not be put in force unless the aforesaid application to the Judge be made within six months of the decease of the proprietor whose property is claimed by right in succession.

Bar to enforcement of Act against public settlement or legal directions by deceased.

15.[2] * * * * This Act shall not be put in force to contravene any public act of settlement; neither in cases in which the deceased proprietor shall have given legal directions for the possession of his property after his decease in the event of minority or otherwise, in opposition to such directions; but in every such case, so soon as the Judge having jurisdiction over the property of a deceased person shall be satisfied of the existence of such directions, he shall give effect thereto.

Court of Wards to be made curator in case of minors having property subject to its jurisdiction.

16.[1] * * * * This Act shall not be in force for the purpose of disturbing the possession of the Court of Wards of any presidency; and in case a minor, or other disqualified person whose property shall be subject to the Court of Wards, shall be the party on whose behalf application is made under this Act, the Judge, if he determines to cite the party in possession and also appoint a curator, shall invest the Court of Wards with the curatorship of the estate pending the suit without taking such security as aforesaid; and in case the minor or other disqualified person shall, upon the adjudication of the summary suit, appear to be entitled to the property, possession shall be delivered to the Court of Wards.

Saving of right to bring regular suit.

17.[1] * * * Nothing in this Act contained shall be any impediment to the bringing of a regular suit either by the party whose application may have been rejected before or after citing the party in possession, or by the party who may have been evicted from the possession under this Act.

Effect of decision of summary suit.

18.[3] * * * The decision of the Judge upon the summary suit under this Act shall have no other effect than that of settling the actual possession; but [3]* for this purpose it shall be final, not subject to any appeal or order for review.

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[1] The words "And it is hereby provided that" in ss. 14, 16 & 17 were repealed by the Repealing Act, 1874 (16 of 1874).

[2] The words "And it is hereby enacted that" in ss. 15 & 19 were repealed by the Repealing Act, 1874 (16 of 1874).

[3] The words "And it is hereby enacted, that" in s. 18 were repealed by the Repealing Act, 1874 (16 of 1874), and the word "that" by the Repealing Act, 1876 (12 of 1876).

19.[1] * * * It shall be lawful for the Governments of the respective presidencies to appoint public curators for any district or number of districts; and the Judge having jurisdiction shall nominate such public curator or curators in all cases where the choice of a curator is left discretionary with him under preceding provisions of this Act. Appointment of public curators.

20. [*Power to appoint ecclesiastical registrar or curators to receive effects in certain cases.*] *Rep. by Act VIII of 1855, s. 13.*

ACT No. XXIV OF 1841.[2]

An Act for the greater uniformity of the Law administered by Her Majesty's Supreme Courts with that administered in England, in regard to *the undisposed residue of the effects of Testators*, Illusory Appointments, the transfer of Estates by persons under disabilities pursuant to the direction of Courts, and the better management of the property of such persons and other like matters.

1. [*Extension of 11 Geo. 4 and 1 Will. 4, c. 46.*] *Rep. by the Repealing Act, 1868 (VIII of 1868).*

2.[2] * * * The [3] Statute 11 George IV & 1 William IV, Extension of II Geo. IV &

[1] The words "And it is hereby enacted that" in ss. 15 and 19 were repealed by the Repealing Act, 1874 (16 of 1874).

[2] Short title, "The Illusory Appointments and Infants' Property Act, 1841." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

The whole Act, except so far as it relates to illusory appointments and infants, and except s. 5, was repealed by the Repealing Act, 1868 (8 of 1868).

The words "And it is hereby enacted, that" at the beginning of s. 2 and the words "from the first day of January next" after the word "shall" in the same section were repealed by the Repealing Act, 1874 (16 of 1874).

The Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44) and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum. *See* Gazette of India, 1881, Pt. I, p. 504.

The Scheduled Districts in Ganjam and Vizagapatam, *see* Fort St. George Gazette, 1898, Pt. I, p. 666, and Gazette of India, 1898, Pt. I, p. 870.

[3] 11 GEO. IV AND 1 WM. IV, CAP. XLVI.[a]

An Act to alter and amend the Law relating to Illusory Appointments.

[*16th July, 1830.*]

Whereas, by deeds, wills, and other instruments, powers are frequently given to appoint real and personal property amongst several objects, in such manner that none of the objects can be excluded by the donee of the power from a share of such property; and whereas appointments in exercise of such powers whereby an unsubstantial, illusory, or nominal share of the property affected thereby is appointed to or left unappointed to devolve upon any one or more of the objects thereof, are invalid in equity, although the like appointments are good and binding at law: And whereas considerable inconvenience hath arisen from the rule of equity relative to such appointments, and it is expedient that such appointments should be as valid in equity as at law; Be it therefore enacted, etc. Preamble.

That no appointment which from and after the passing of this Act shall be made in exercise of any power or authority to appoint any property, real or personal, amongst Illusory appointments shall be valid

[a] Short title, "The Illusory Appointments Act, 1830," *See* the Short Titles Act, 1896 (59 & 60 Vict., c, 14).

1 Wm. IV, caps. 46 and 65.

Chapter 46, entitled "An Act to alter and amend the Law relating to Illusory Appointments," and the [1]Statute 11 George IV & 1 William

11 Geo. IV & 1 Wm. IV, caps. 46 and 65.

in equity as well as at law.

several objects, shall be invalid or impeached in equity, on the ground that an unsubstantial, illusory, or nominal share only shall be thereby appointed to or left unappointed to devolve upon any one or more of the objects of such power; but that every such appointment shall be valid and effectual in equity as well as at law, notwithstanding that any one or more of the objects shall not thereunder, or in default of such appointment, take more than an unsubstantial, illusory, or nominal share of the property subjected to such power.

Not to affect any deed which declares the amount of the share; nor to give any other force to any appointment than the same would have had.

2. Provided always, and be it further enacted, that nothing in this Act contained shall prejudice or affect any provision in any deed, will, or other instrument creating any such power as aforesaid which shall declare the amount of the share or shares from which no object of the power shall be excluded.

3. Provided also, and be it further enacted and declared, that nothing in this Act contained shall be construed, deemed, or taken, at law or in equity, to give any other validity, force, or effect to any appointment, than such appointment would have had if a substantial share of the property affected by the power had been thereby appointed to or left unappointed to devolve upon any object of such power:

[1] 11 GEO. IV & 1 WM. IV, CAP. LXV.[a]

An Act for consolidating and amending the Law relating to Property belonging to Infants, Feme-Coverts, Idiots, Lunatics, and Persons of unsound Mind.

[*23rd July, 1830.*]

* * * * * * * * * *

Guardians of minors, etc., in order to the surrender and renewal of leases may apply to the Court of Chancery, etc., and by order may surrender such leases and renew the same, etc.

12. And be it further enacted, that in all cases where any person, being under the age of twenty-one years.....is or shall become entitled to any lease or leases made or granted or to be made or granted for the life or lives of one or more person or persons, or for any term of years, either absolute or determinable upon the death of one or more person or persons, or otherwise, it shall be lawful for such person under the age of twenty-one years, or for his or her guardian or other person on his behalf,..... .....to apply to the Court of Chancery in England, the Courts of Equity of the Counties Palatine of Chester, Lancaster and Durham, or the Courts of Great Session of the Principality of Wales respectively, as to land within their respective jurisdiction, by petition or motion in a summary way; and by the order and direction of the said Courts respectively such infant.....or his guardian, or any person appointed in the place of such infant.....by the said Courts respectively, shall and may be enabled from time to time, by deed or deeds, to surrender such lease or leases, and accept and take, in the place and for the benefit of such person under the age of twenty-one years,.....one or more new lease or leases of the premises comprised in such lease surrendered by virtue of this Act, for and during such number of lives, or for such term or terms of years determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned or contained in the lease or leases so surrendered at the making thereof respectively, or otherwise as the said Courts shall respectively direct.

* * * * * * * * * *

Charges attending renewal to be charged on the estates as the Court shall direct.

14. And be it further enacted, that every sum of money and other consideration paid by any guardian,.....or other person as a fine, premium, or income, or in the nature of a fine, premium, or income, for the renewal of any such lease, and all reasonable charges incident thereto, shall be paid out of the estate or effects of the infant.....for whose benefit the lease shall be renewed, or shall be a charge upon the leasehold premises, together with interest for the same, as the said Courts and Lord Chancellor, intrusted as aforesaid, respectively shall direct and determine; and as to leases to be made upon surrenders by femes-covert, unless the fine or consideration of such lease and the reasonable charges shall be otherwise paid or secured, the same, together with interest, shall be a charge upon such leasehold premises for the benefit of the person who shall advance the same.

New leases shall be to the same uses.

15. And be it further enacted, that every lease to be renewed as aforesaid shall operate and be to the same uses, and be liable to the same trusts, charges, incumbrances, dispositions, devises, and conditions, as the lease to be from time to time surrendered as aforesaid was or would have been subject to in case such surrender had not been made.

[a] Short title, "The Infants' Property Act, 1830." *See* the Short Titles Act, 1896 (59 & 60 Vict., c. 14).
As to the repeal of parts of the Act in England, *see* the Statute Law Revision Act, 1873 (36 & 37 Vict., c. 91).

IV, chapter 65, entitled "An Act for consolidating and amending the Law relating to property belonging to infants, feme-coverts, idiots, lunatics and persons of unsound mind," shall * * * * be extended to the territories of the East India Company, as far as it is applicable to the same.

3. [*Extension of 11 Geo. IV. and 1 Mm. IV, c. 60.*] *Rep. by the Indian Trustee Act, 1866 (XXVII of 1866).*

Infants empowered to grant renewals of leases.

16. And be it further enacted, that where any person, being under the age of twenty-one years,.....might, in pursuance of any covenant or agreement, if not under disability be compelled to renew any lease made or to be made for the life or lives of one or more person or persons, or for any term or number of years absolute or determinable on the death of one or more person or persons, it shall be lawful to and for such infant, or his guardian in the name of such infant,.....by the direction of the Court of Chancery, to be signified by an order to be made in a summary way upon the petition of such infant or his guardian,..... or of any person entitled to such renewal, from time to time to accept of a surrender of such lease, and to make and execute a new lease of the premises comprised in such lease, for and during such number of lives, or for such term or terms determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned in the lease so surrendered at the making thereof, or otherwise, as the Court by such order shall direct.

Court of Chancery may authorize leases to be made of lands belonging to infants when it is to the benefit of the estate.

17. And be it further enacted, that where any person, being an infant under the age of twenty-one years, is or shall be seized or possessed of or entitled to any land in fee or in tail, or to any leasehold land for an absolute interest, and it shall appear to the Court of Chancery to be for the benefit of such person that a lease or under-lease should be made of such estates for terms of years, for encouraging the erection of buildings thereon, or for repairing buildings actually being thereon, or the working of mines, or otherwise improving the same, or for farming or other purposes, it shall be lawful for such infant, or his guardian in the name of such infant, by the direction of the Court of Chancery, to be signified by an order to be made in a summary way upon the petition of such infant or his guardian, to make such lease of the land of such persons respectively, or any part thereof, according to his or her interest therein respectively, and to the nature of the tenure of such estates respectively, for such term or terms of years, and subject to such rents and covenants as the said Court of Chancery shall direct; but in no such case shall any fine or premium be taken, and in every such case the best rent that can be obtained, regard being had to the nature of the lease shall be reserved upon such lease; and the leases, and covenants and provisions therein, shall be settled and approved of by a Master of the said Court, and a counterpart of every such lease shall be executed by the lessee or lessees therein to be named, and such counterparts shall be deposited for safe custody in the Master's office until such infant shall attain twenty-one, but with liberty to proper parties to have the use thereof, if required, in the meantime, for the purpose of enforcing any of the covenants therein contained; provided that no lease be made of the capital mansion house and the park and grounds respectively held therewith for any period exceeding the minority of any such infant.

* * * * * * * *

So much of 1G.I.,c.10,s.9, as enacts that agreements of guardians shall bind infants, repealed.

[a] 25. And whereas by an Act passed in the first year of the reign of King George the First intituled *An Act for making more effectual Her late Majesty's gracious Intentions for augmenting the Maintenance of the poor Clergy*,[b] it was enacted that the agreements of guardians for and on behalf of infants or idiots under their guardianship should be as good and effectual to all intents and purposes as if the said infants or idiots had been of full age and of sound mind, and had themselves entered into such agreements: And whereas it is desirable that the said powers should be exercised under proper control, and that the same should be extended to all persons against whom a commission of lunacy shall have issued; Be it further enacted, that so much of the said Act of the first year of the reign of King George the First, as is hereinbefore recited, shall be and the same is hereby repealed.

Such agreements may be made by guardians

26. And be it further enacted, that the guardian of any infant, with the approbation of the Court of Chancery, to be signified by an order to be made on the petition of such guardian in a summary way, may enter into any agreement for or on behalf of such infant

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[a] This section has been repealed in England by the Statute Law Revision Act, 1875 (38 & 39 Vict., c. 91), Schedule.

[b] "The Queen Anne's Bounty Act, 1716." *See* the Short Titles Act (59 & 60 Vict., c. 14).

Extension of 11 Geo. IV and 1 Wm. IV, c 47, *ss.* 10 and 11.

4. [1] * * * * Section [2] * * 11 of the 11 [3] George IV and 1 William IV, chapter 47, entitled "an Act for consolidating and amending the laws for facilitating the payment of debts out of real Estate," shall [1] * * * be extended to the territories of the East India Company, as far as it is applicable in the same.

Saving of certain cases

5. [1] * * * * This Act shall not be construed to affect any

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with the approbation of the Court.

which such guardian might have entered into by virtue of the said last recited Act, if the same had not been repealed.

Court of Chancery or Exchequer may order dividends of stock belonging to infants to be applied for maintenance.

32. And be it further enacted that it shall be lawful for the Court of Chancery, by an order to be made on the petition of the guardian of any infant in whose name any stock shall be standing, or any sum of money, by virtue of any Act for paying off any stock, and who shall be beneficially entitled thereto, or if there shall be no guardian, by an order to be made in any cause depending in the said Court, to direct all or any part of the dividends due or to become due in respect of such stocks or any such sum of money, to be paid to any guardian of such infant, or to any other person according to the discretion of such Court, for the maintenance and education or otherwise for the benefit of such infant, such guardian or other person to whom such payment shall be directed to be made being named in the order directing such payment; and the receipt of such guardian or other person for such dividends or sum of money, or any part thereof, shall be as effectual as if such infant had attained the age of twenty-one years, and had signed and given the same.

* * * * * * * * * *

[1] The words "And whereas it is expedient to adopt the amendments of the English Law touching the delay of action, suits, or other proceedings, by reason of the parol demurring; and touching conveyances made by infants under order of Courts; it is hereby enacted that", the words "from the first day of January next" in s. 4, and the words "And it is hereby provided, that" in section 5 were repealed by the Repealing Act, 1874 (16 of 1874).

[2] The figures and word, "10 and" were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[3] 11 GEO. IV & 1 WM. IV CHAP. XLVII.[a]

An Act for consolidating and amending the Laws for facilitating the payment of debts out of real Estate.

[*16th July 1830.*]

* * * * * * * * * *

Infants to make conveyances under order of the Court.

XI. [b]*And be it further enacted, that* where any suit hath been or shall be instituted in any Court of Equity, for the payment of any debts of any person or persons deceased, to which their heir or heirs, devisee or devisees, may be subject or liable, and such Court of Equity shall decree the estates liable to such debts or any of them, to be sold for satisfaction of such debt or debts, and by reason of the infancy of any such heir or heirs, devisee or devisees, an immediate conveyance thereof cannot, as the law at present stands, be compelled, in every such case such Court shall direct, and, if necessary, compel such infant or infants to convey such estates so to be sold (by all proper assurances in the law) to the purchaser or purchasers thereof, and in such manner as the said Court shall think proper and direct; and every such infant shall make such conveyance accordingly; and every such conveyance shall be as valid and effectual to all intents and purposes as if such person or persons, being an infant or infants, was or were at the time of executing the same of the full age of twenty-one years.

* * * * * * * * * *

[a] Short title, "The Debts Recovery Act, 1830." *See* the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

[b] The initial words "And be it further enacted, that" were repealed in England by the Statute Law Revision Act, 1888 (51 & 52 Vict., c. 57), Schedule.

case which would not have been governed by English law as administered by Her Majesty's Supreme Courts previous to the passing thereof[1] * * and proceedings.

ACT No. XXVII OF 1841.[2]

[*18th October, 1841.*]

An Act for appropriating the unclaimed Dividends on Insolvent Estates.

Preamble.

WHEREAS, pursuant to the orders of the Courts for the Relief of Insolvent Debtors at the several presidencies, divers sums on account of unclaimed dividends on insolvent estates have from time to time been paid over by the assignees of such insolvent estates into the hands of the Accountant-General and Sub-Treasurer of the East India Company at such several presidencies with the privity of the Accountant-General of the said Insolvent Courts to the credit of the persons named in the schedules as creditors of such insolvents respectively;

and whereas it is expedient that in the event of no claim being established to such unclaimed dividends or any part thereof, within a reasonable time such dividends should be distributed among such of the creditors of such insolvent estates as shall have established their claims against such estates respectively;

Distribution of dividends unclaimed for six years amongst creditors who have proved.

1. It is therefore enacted that it shall be lawful for the said Courts of Insolvent Debtors respectively, in the event of no claim being established to such dividends or any part thereof, within six years after any dividend shall have been so paid over as aforesaid, to order the same to be repaid to such assignees, to be by them distributed among such of the creditors of such insolvent estates as shall have established their claims against such estates respectively, and to order such claims to be expunged from such schedules: Provided that this Act shall not affect the right of any party to be paid such dividends out of any future assets which may come to the hands of the assignees, together with any future dividends which may be declared on such insolvent estates respectively in the event of any such claim being afterwards established.

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[1] The words " or any proceedings at Law or in Equity commenced before the first day of January next," were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[2] Short Title, " The Insolvents' Estates (Unclaimed Dividends) Act, 1841. *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874, (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

The Districts of Hazáribágh, Lohárdaga, (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum. *See* Gazette of India, 1881, Pt. I, p. 504.

For Insolvency Rules framed by the High Court, Madras, in connection with this Act, *see* Fort St. George Gazette, 1905, Suptt. dated 2nd May, 1905.

This Act will be repealed by the Insolvency Act now before Council.

Publication of statements of unclaimed dividends before they are distributed.

2. [1]* * * * No such unclaimed dividend shall at any time be distributed under this Act unless a statement of such unclaimed dividends be previously published in manner following:—One year at least before making any such division as aforesaid a statement shall be published three times in the English language, and also in one or more native languages in the Official Gazettes of the respective Presidencies, which statement shall contain the names and descriptions as contained in the schedules of all parties in respect of whose claims dividends are reserved, together with the amount of such claims respectively, and shall specify whether any former dividend or dividends have been paid in respect thereof, and whether any proof shall have at any time been made of the debt whereby any dividend may have accrued: Provided always that this Act shall not authorize the distribution of any such dividend except where no person shall at any time have substantiated any claim to the debt in respect of which such dividend may have become due.

3. [*Wages of domestic servants.*] *Rep. by the Repealing Act, 1868 (VIII of 1868).*

4. [*Commencement of Act.*] *Rep. by the Repealing Act, 1868 (VIII of 1868).*

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[1] The words "And it is hereby enacted, that" in s. 2 were repealed by the Repealing Act, 1874 (16 of 1874).

ACT No. V OF 1843 [1].

[*7th April, 1843.*]

An Act for declaring and amending the Law regarding the condition of Slavery within the Territories of the East India Company.

Prohibition of sale of

1. * * * * No. public officer shall, in execution of any decree or order of Court, or for the enforcement of any demand of rent

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[1] Short title, " The Indian Slavery Act, 1843." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, to be in force in the whole of British India, except as regards the Scheduled Districts. [For Act 15 of 1874, *see* Genl. Acts, Vol. II.]

It has been declared in force in—

Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 4 (*1*) and Sch. I, Bur. Code;

the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by Regulation III of 1899, s. 3, Ben. Code, Vol. I;

in the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (1 of 1900), E. B. & A. Code, Vol. I.

It has been applied to—

British Baluchistan by the British Baluchistan Laws Regulation, 1890 (1 of 1890), Bal. Code;

the Chin Hills as regards Hill-tribes, by the Chin Hills Regulation, 1896 (5 of 1896), s. 3, Bur. Code;

the Kachin Hill-tracts as regards Hill-tribes, by the Kachin Hill-tribes Regulation, 1895 (I of 1895), s. 3, Bur. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India,	1880, Pt. I, p. 672.
Aden	Ditto	1879, Pt. I, p. 434.
West Jalpáiguri, the Western Dvárs the Western Hills of Dárjiling, the Dárjiling Tarái and the Damson Sub-division of the Dárjiling District .	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum and Pargana Dhálbhum and the Kolhán in the District of Singbhum .	Ditto	1881, Pt. I, p. 504.
The Porahat Estate in the District of Singbhum . . .	Ditto	1897, Pt. I, p. 1059.
The Scheduled portion of the Mirzápur District . . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Peshawar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and*)		

persons or right to his labour on ground of slavery.

or revenue, sell or cause to be sold any person, or the right to the compulsory labour or services of any person, on the ground that such person is in a state of slavery.[1]

Bar to enforcement of rights arising out of alleged property in person as a slave.

2.[1] * * * * No rights arising out of an alleged property in the person and services of another as a slave shall be enforced by any Civil or Criminal Court or Magistrate within the territories of the East India Company.

Bar to dispossession of property on ground of owner's slavery

3.[2] * * * * No person who may have acquired property by his own industry, or by the exercise of any art, calling or profession, or by inheritance, assignment, gift or bequest, shall be dispossessed of such property or prevented from taking possession thereof on the ground that such person or that the person from whom the property may have been derived was a slave.

Penal offence against alleged slave.

4.[2] * * * * Any act which would be a penal offence if done to a free man shall be equally an offence if done to any person on the pretext of his being in a condition of slavery.

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ibid, 1902, Pt. I, p. 575; but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N.-W. Code)	*See* Gazette of India,	1886, Pt. I, p. 48.
The District of Lahaul	Ditto	1886, Pt. I, p. 301.
The Scheduled Districts of the Central Provinces	Ditto	1879, Pt. I, p. 771.
The District of Sylhet	Ditto	1879, Pt. I, p. 631.
The Districts of Kámrup, Naugong, Darrang, Sibságar, Lakhimpur, Goálpára (excluding the Eastern Dvárs) and Cachar (excluding the North Cachar Hills)	Ditto	1878, Pt. I, p. 533
The Gáro Hills, the Khási and Jaintiá Hills, the Nága Hills, the North Cachar Hills in the Cachar District and the Eastern Dvárs in the Goálpára District	Ditto	1897, Pt. I, p. 299.

The Scheduled Districts in Ganjam and Vizagapatam, *see* Fort St. George Gazette, 1898, Pt. I, p. 666, and Gazette of India, 1898, Pt. I, p. 870.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

The Districts of Kumáon and Garhwál	*See* Gazette of India,	1876, Pt. I, p. 606.
The Tarái of the Province of Agra	Ditto	1876, Pt. I, p. 505.

[1] The words " It is hereby enacted and declared , that " at the commencement of s. 1 were repealed by the Repealing Act, 1874 (16 of 1874).

[2] The words " And it is hereby declared and enacted, that " in ss. 2 and 3 and the words " And it is hereby enacted that " in s. 4, were repealed by the Repealing Act, 1874 (16 of 1874).

ACT No. I OF 1846[1].

[*7th January, 1846.*]

An Act for amending the Law regarding appointment and remuneration of Pleaders in the Courts of the East India Company.

1, 2 & 3. [*Repeal of enactments.*] *Rep. by the Repealing Act, 1874 (VI of 1874).*

Office of pleader open to persons duly certificated.

4.[2] * * * * The officer of pleader in the Courts of the East India Company shall be open to all persons of whatever nation or religion: Provided that no person shall be admitted a pleader in any of those Courts unless he have obtained a certificate in such manner as shall be directed by the Sadr Courts that he is of good character and duly qualified for the office, any law or regulation to the contrary notwithstanding:

Right of barrister to plead in all Courts.

5. Provided[3] * * * that every barrister of any of Her Majesty's Courts of Justice in India shall be entitled as such to plead in any of the Sadr Courts of the East India Company, subject however to all the rules in force in the said Sadr Courts applicable to pleaders whether relating to the language in which the Court is to be addressed or to any other matter.

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[1] Short title, "The Legal Practitioners Act, 1846." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared, by the Laws Local Extent Act, 1874 (15 of 1874), s. 4, to be in force in the Madras and Bombay Presidencies, except as regards the Scheduled Districts. [For Act 15 of 1874, *see* Genl. Acts, Vol. II.]

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the Scheduled District of Sind. *See* Gazette of India, 1880, Pt. I, p. 672. [For Act 14 of 1874, *see* Genl. Acts, Vol. II.]

It has been declared under s. 3 (*b*) of the same Act that Act I of 1846 is not in force in the Scheduled Districts of Ganjam and Vizagapatam, *see* Fort St. George Gazette, 1898, Pt. I, p. 667, and Gazette of India, 1898, Pt. I, p. 872.

It is repealed in places to which the Pleaders, Mukhtárs and Revenue Agents Act, 1865 (20 of 1865), is extended, by s. 3 of that Act, and in places to which the Legal Practitioners Act, 1879 (18 of 1879), applies, by the Legal Practitioners Act, 1884 (9 of 1884), s. 9.

It has been repealed, in so far as it applies to Burma, by the Burma Laws Act, 1898 (13 of 1898), s. 18 (*1*), and Sch. V., Bur. Code.

[2] The words "And it is hereby enacted that" in s. 4 of Act 1 of 1846 were repealed by the Repealing Act, 1874 (16 of 1874).

S. 4 does not extend to barristers and attorneys of the Supreme Courts, *see* s. 4 of the Pleaders Act, 1853 (20 of 1853), *infra*.

[3] The words "Nevertheless, and it is hereby enacted" in s. 5, and the words "And it is hereby enacted that" in ss. 7, 8, and 10 were repealed by the Repealing Act, 1874 (16 of 1874), Schedule, Pt. I; and the word "that" which occurred in the third line of s. 7, by the Repealing Act, 1876 (12 of 1876), Schedule, Pt. I.

Enactment to cease to have force, except for specified purposes.

6.[1] * * * Section 52, Regulation II, 1827, of the Bombay Code, shall cease to be enforced, excepting for the purpose specified in section 7 of this Act. Bom. Reg. II of 1827.

Private agreement between parties and pleaders.

Calculation of pleaders' fees out of costs awarded in regular suits.

In other cases.

7.[2] * * * Parties employing authorized pleaders in the said Courts shall be at liberty to settle with them by private agreement the remuneration to be paid for their professional services, and [2] * it shall not be necessary to specify such agreement in the vakálatnáma: Provided that when costs are awarded to a party in any regular suit, original or appeal, decided on the merits, against another party, the amount to be paid on account of fees of pleaders shall be calculated according to the rules contained [3] [in the section of the Regulation] specified in section 6 of this Act; and that when costs are awarded in other cases the amount to be paid on account of such fees shall be one-fourth of what it would have been in a regular suit decided on its merits.

Enforcement of private agreements.

8.[2] * * * Private agreements between parties and their pleaders respecting the remuneration to be paid for professional services shall not be enforced otherwise than by a regular suit.

Remuneration for opinions.

9.[4] * * * * Persons taking [5]* opinions from authorized pleaders shall be at liberty to settle with them by private agreement the remuneration to be paid for such opinions.

Power of Sadr Amin to fine pleader.

Appeal.

10.[2] * * * * Whenever a pleader has rendered himself liable to a fine in the Court of a Principal Sadr Amin or Sadr Amin, it shall be competent to such Principal Sadr Amin or Sadr Amin to impose such fine; Provided that an appeal from all orders imposing such fines shall lie to the Zila or City Judge, whose decision thereon shall be final.

Rules applied.

11.[6] * * * The rules applicable to pleaders in the Courts of the Zila and City Judges shall henceforth be applicable, so far as they are capable of application, to pleaders in the Munsifs' Courts.

Power of Munsif to fine pleader.

12.[6] * * * * Whenever a pleader has conducted himself in such a manner in the Court of a Munsif as would have rendered him

[1] The words "And it is hereby enacted that" and the words and figures "section 25, Regulation XXVII, 1814 of the Bengal Code; section 25, Regulation XIV, 1816, of the Madras Code, and," were repealed by the Repealing Act, 1874 (16 of 1874), and the Repealing and Amending Act, 1891 (12 of 1891), respectively.

[2] *See* third foot-note on preceding page.

[3] These words were substituted for the words "the sections of Regulations" by the Repealing and Amending Act, 1891 (12 of 1891), Genl. Acts, Vol. IV.

[4] The words "And it is hereby enacted that" and the words and figures "so much of section 20, Regulation XXVII, 1814, of the Bengal Code, and of section 20, Regulation XIV, 1816, of the Madras Code as prescribes the rates of fees to be received by authorized pleaders for legal opinions, be repealed, and that," were repealed by the Repealing Act, 1874 (16 of 1874) and the Repealing Act, 1876 (12 of 1876), respectively.

[5] The word "such" was repealed by the Repealing Act, 1876 (12 of 1876).

[6] The words "And it is hereby enacted that" in ss. 11, 12 and 13 were repealed by the Repealing Act, 1874 (16 of 1874).

liable to a fine if he had so conducted himself in the Court of a Zila or City Judge, it shall be competent to such Munsif to impose such fine. Provided that an appeal from all orders imposing such fine shall lie to the Zila or City Judge, whose decision thereon shall be final. Appeal.

13.[1] * * * * * * Nothing in this Act contained shall apply to vakíls who may be employed in the Courts of the Village Munsifs, or before the Village or District panchâyats, or before the Collectors of Zilas, under the provisions of Regulations [2] IV, V, [3] VII, and XII, 1816, of the Madras Code. Act not to affect certain vakils.

Mad. Regs. IV, V, VII and XII of 1816.

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Assignment of Copyright by entry in registry.
6. Application by person aggrieved by entry in registry for order to vary or expunge it.
7. Liability for infringement of Copyright.
8. Notice to be given by defendant to plaintiff in suit for infringing Copyright.
Particulars to be stated in notice when right of plaintiff is denied.

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[1] *See* sixth foot-note on preceding page.
[2] For Regulation IV of 1816, the Madras Village Courts Act, 1888 (1 of 1888), should now be read wherever that Act is in force. *See* section 2 (*3*) of that Act, Madras Code, Vol. II.
[3] Repealed by the Madras Village Courts Act, 1873 (3 of 1873).

SECTIONS.

Effect of omission.
9. Particulars to be stated in defendant's answer to suit.
Effect of omission.
10. Copyright in encyclopædia, review, etc.
Consent of author to publication singly.
Employé's right to publish separately.
11. Rights of proprietor of Copyright on making entry in registry.
12. Proprietorship of copies of book illegally printed.
13. Right of Copyright proprietor to sue for and recover copies or damages.
14. Entry in registry to be made before Copyright proprietor can proceed under Act.
Omission to make entry not to affect Copyright, etc.
15. Plea by defendant and special evidence in actions for things done under Act.
Defendant to have full costs if successful.
16. Limitation of criminal proceedings for breach of Act.
17. [*Repealed.*]
SCHEDULE.—No. 1.—ORIGINAL ENTRY OF PROPRIETORSHIP OF COPYRIGHT OF A BOOK.
No. 2.—FORM OF ENTRY OF ASSIGNMENT OF COPYRIGHT IN ANY BOOK PREVIOUSLY REGISTERED.

ACT No. XX OF 1847.[1]

[*18th December, 1847.*]

An Act for the encouragement of learning in the Territories subject to the Government of the East India Company, by

[1] Short title, "The Indian Copyright Act, 1847."—*see* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

Act 20 of 1847 has been declared to be in force in the whole of British India, except the Scheduled Districts by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s. 4 (*1*), Sch. I, Bur. Code.

It has been declared by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts, namely :—

Jaunsar Báwar	*See* Gazette of India, 1879, Pt. I, p. 382.	
The scheduled portion of the Mirzapur District . .	Ditto	1879, Pt. I, p. 383.
Aden	Ditto	1879, Pt. I, p. 434.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushai Hills).	Ditto	1897, Pt. I, p. 293.
The Scheduled Districts of the Central Provinces.	Ditto	1879, Pt. I, p. 771.

defining and providing for the enforcement of the right called Copyright therein.

Preamble.

WHEREAS doubts may exist whether the right called Copyright can be enforced by the common law of England in those parts of the territories subject to the Government of the East India Company into which the common law of England has been introduced;

And whereas doubts may exist whether the said right can be enforced by virtue of the principles of equity and good conscience in the other parts of the territories subject to the Government of the East India Company;

And whereas for the encouragement of learning it is desirable that the existence of the said right should be placed beyond doubt, and that the said right should be made capable of easy enforcement in every part of the said territories;

Sind	*See* Gazette of India, 1880, Pt. I, p. 672.	
West Jalpáiguri . . .	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribagh, Lohardaga (now the Ranchi District, *see* Calcutta Gazette 1899, Pt. I, p. 44) and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singbhum.	Ditto	1881, Pt. I, p. 504.
The Island of Perim . .	Ditto	1886, Pt. I, p. 5.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N.-W. Code*) .	Ditto	1886, Pt. I, p. 48.
The District of Lahaul . .	Ditto	1886, Pt. I, p. 301.
The Scheduled Districts in Ganjam and Vizagapatam.	Ditto	1898, Pt. I, p. 870.

It has been extended by notification under s. 5 of the same Act, to the following Scheduled Districts, namely :—

The Districts of Kumaon and Garhwal.	*See* Gazette of India, 1876, Pt. I, p. 605.	
The Tarai of the Province of Agra.	Ditto	1876 Pt. I, p. 506.

And whereas it is doubtful whether the [1] Act of Parliament 5 & 6 Victoria, cap. 45, entitled "*An Act to amend the Law of Copyright,*" although such Act extend to every part of the British dominions, has made appropriate and sufficient provision for the enforcement in every part of the said territories subject to the Government of the East India Company of the said right by proprietors thereof, and whether the said Act of Parliament has made provision for the enforcement of the said right by or against any persons not being subject to the jurisdiction of the Courts established by Her Majesty's Charter; 5 & 6 Vict., 45.

Duration of Copyright in book published in author's lifetime.

1. It is therefore hereby enacted that the Copyright in every book published in the lifetime of its author within the said territories after the passing of the [1] Act of Parliament 3 & 4 Wm. IV, cap. 85, entitled "*An Act for effecting an arrangement with the East India Company and for the better government of His Majesty's Indian Territories till the 30th day of April, 1854,*" shall endure for the natural life of such author, and for the further term of seven years commencing at the time of his death, and shall be the property of such author and his assigns: Provided always that, if the said term of seven years shall expire before the end of forty-two years from the publication of such book, the Copyright shall in that case endure for such period of forty-two years; and that the Copyright in every book published after the death of its author and after the passing of the Act of Parliament last aforesaid shall endure for the term of forty-two years from the first publication thereof and shall be the property of the proprietor of the author's manuscript, from which such book shall be first published, and his assigns.[2] 3 & 4 Wm. V, c. 85.

Proprietorship.

In book published after author's death.

Proprietorship.

Power to license republication when Copyright proprietor refuses.

2. And whereas it is expedient to provide against the suppression of books of importance to the public: It is enacted that it shall be lawful for the Governor General in Council on complaint made to them that the proprietor of the Copyright in any book published after the passing of this Act within the said territories has, after the death of its author, refused to republish or to allow the republication of the same, and that by reason of such refusal, such book may be withheld from the public, to grant a license to such complainant to publish such book in such manner and subject to such conditions as they may think fit, and it shall be lawful for such complainant to publish such book according to such license.[3]

3.[4] * * * * * A book of registry,[5] wherein may be Registry of Copyright, assignments and licenses.

[1] Coll. Stats. Ind., Vol. I.

[2] Taken from the Copyright Act, 1842 (5 & 6 Vict., c. 45), s. 3, Coll. Stats. Ind., Vol. I.

[3] *Cf.* the Copyright Act, 1842 (5 & 6 Vict., c. 45), s. 5.

[4] The words "And it is hereby enacted, that" and the words "and that" after the word "book" in s. 3 were repealed by the Repealing and Amending Act, 1874 (16 of 1874).

[5] Registration in the Catalogue of Books printed in British India maintained under the provisions of the Press and Registration of Books Act, 1867 (25 of 1867), is deemed an entry in the Book of Registry kept under this Act, and the provisions of this Act as to the Book of Registry apply, *mutatis mutandis*, to that Catalogue. *See* s. 18 of Act 25 of 1867, *infra*.

registered, as hereinafter enacted, the proprietorship in the Copyright of books and assignments thereof, and licenses affecting such Copyright, shall be kept in the office of the Secretary to the Government of India for the Home Department, and shall at all convenient times be opened to the inspection of any person on payment of eight annas for every entry which shall be searched for or inspected in the said book [1] * * Such officer shall, whenever thereunto reasonably required, give a copy of any entry in such book, certified under his hand, to any person requiring the same, on payment to him of the sum of two rupees, and such copies so certified shall be received in evidence in all Courts and in all summary proceedings, and shall be *primâ facie* proof of the proprietorship or assignment of Copyright or license as therein expressed, but subject to be rebutted by other evidence.[2]

Inspection. Giving copies.

4. [*Punishment for making false entry in registry, etc.*] *Rep. by Act XVII of 1862.*

5.[3] * * * It shall be lawful for the proprietor of Copyright in any book, published after the passing of the said [4] Act of Parliament, 3 & 4 Wm. IV, cap. 85, to make entry in the Registry Book of the title of such book, the time of the first publication, and the name and place of abode of the publisher thereof, and the name and place of abode of the proprietor of the Copyright of the said book, or of any portion of such Copyright in the form in that behalf given in the schedule to this Act annexed, upon payment of the sum of two rupees to the said Secretary. [3] * * * It shall be lawful for every such registered proprietor to assign his interest or any portion of his interest therein, by making entry in the said Book of Registry of such assignment, and of the name and place of abode of the assignee thereof, in the form given in that behalf in the said schedule on payment of the like sum; and such assignment so entered shall be effectual in law to all intents and purposes whatsoever, [5] * * * * and shall be of the same force and effect as if such assignment had ben made by deed.[6]

3 & 4 Wm. IV, c 85.

Copyright proprietor's right to make entries in registry.

Assignment of Copyright by entry in registry.

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[1] *See* fourth foot-note on preceding page.

[2] *Cf.* the Copyright Act, 1842 (5 & 6 Vict., c. 45), s. 11.

[3] The words "And it is enacted that after the passing of this Act" and the words "and that" in s. 5 were repealed by the Repealing Act, 1874 (16 of 1874).

[4] Coll. Stats. Ind., Vol. I, Short title, "The Government of India Act, 1833." *See* the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

[5] The words "without being subject to any stamp or duty," were repealed by s. 2 and Sch. III of the Indian Stamp Act, 1879 (1 of 1879). [For the Stamp Act now in force, *see* Act 11 of 1899.] Assignments of copyright under this section are exempted from stamp-duty—*see* exemption to Art 25 in Sch. I of Act 2 of 1899, Genl. Acts, Vol. V.

[6] *Cf.* the Copyright Act, 1842 (5 & 6 Vict., c. 45), ss. 13 and 14, respectively. Coll. Stats., Ind., Vol. I.

Application by person aggrieved by entry in registry for order to vary or expunge it.

6. If any person shall deem himself aggrieved by any entry made under colour of this Act in the said Book of Registry, it shall be lawful for such person to apply by motion to the Supreme Court of Calcutta, or, if the Court shall not be then sitting, to any Judge of such Court sitting in chambers, for an order that such entry may be expunged or varied. [1] * * Upon any such application to the said Court, or to a Judge as aforesaid, such Court or Judge shall make such order for expunging, varying or confirming such entry, either with or without costs, as to such Court or Judge shall seem just; and the said Secretary shall, on the production to him of any such order for expunging or varying any such entry, expunge or vary the same, according to the requisitions of such order.[2]

Liability for infringement of Copyright.

7. [1] * * * * If any person shall [3] * * print or cause to be printed, either for sale or exportation, any book in which there shall be subsisting Copyright, without the consent in writing of the proprietor thereof, or shall have in his possession for sale or hire any such book so unlawfully printed without such consent as aforesaid, such offender [4] * * * * shall be liable [5] * * * * to a suit in the highest local Court exercising original civil jurisdiction. [3] * * [6].

Notice to be given by defendant to plaintiff in suit for infringing Copyright.

8. [7] * * * * In any suit or action brought in any of the Courts of Judicature established by Her Majesty's Charter under the provisions of this Act against any person, for printing any such book for sale, hire or exportation, or for selling, publishing or exposing to sale

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[1] The words "And it is enacted that" in ss. 6 and 7 and the words "and that" in s. 6 were repealed by Act 16 of 1874.

[2] *See* sixth foot-note on preceding page.

[3] The words "after the passing of this Act," and the words "in such part of the said territories" at the end of section 7, were repealed by the Repealing Act, 1876 (12 of 1876).

[4] The words "if he shall have so offended within the local limits of the jurisdiction of any of the Courts of Judicature established by Her Majesty's Charter," in s. 7 were repealed by the Repealing Act, 1876 (12 of 1876).

[5] The words "to a special action on the case in such Court; and if he shall have so offened in any other part of the territories subject to the Government of the East India Company, to a suit in the Zila Court within the jurisdiction of which he shall have so offended, which shall and may be prosecuted in the same manner in which any other action of damages may be brought and prosecuted there; and if he shall have so offended in any such last-mentioned part of the territories subject to the Government of the East India Company in which there is no Zila Court," in s. 7 were repealed by the Repealing Act, 1876 (12 of 1876).

[6] *Cf.* the Copyright Act, 1842 (5 & 6 Vict., c. 45), s. 15, Coll. Stats., Ind., Vol. I.

[7] The words "And it is hereby enacted that after the passing of this Act" were repealed by the Repealing Act, 1874 (16 of 1874).

or hire, or causing to be sold, published or exposed to sale or hire, or for having in his possession for sale or hire, any such book so unlawfully printed, the defendant, on pleading thereto, shall give to the plaintiff a notice in writing of any objections on which he means to rely on the trial of such action;

and if the nature of his defence be that the plaintiff in such action was not the author or first publisher of the book in which he shall by such action claim Copyright, or is not the proprietor of the Copyright therein, or that some other person than the plaintiff was the author or first publisher of such book, or is the proprietor of the Copyright therein, then the defendant shall specify in such notice the name of the person who he alleges to have been the author or first publisher of such book, or the proprietor of the Copyright therein, together with the title of such book, and the time when and the place where such book was first published; Particulars to be stated in notice when right of plaintiff is denied.

otherwise the defendant in such action shall not, at the trial or hearing of such action, be allowed to give any evidence that the plaintiff in such action was not the author or first publisher of the book in which he claims such Copyright as aforesaid, or that he was not the proprietor of the Copyright therein, and at such trial or hearing no other objection shall be allowed to be made on behalf of such defendant than the objections stated in such notice, or that any other person was the author or first publisher of such book, or the proprietor of the Copyright therein than the person specified in such notice, or give in evidence in support of his defence any other book than one substantially corresponding in title, time and place of publication, with the title, time and place specified in such notice.[1] Effect of omission.

9. [2] * * * * * In any such suit or action as last aforesaid brought in any Zila Court or other local Court as aforesaid the defendant shall state in his answer all such matters as he means to rely on, and which by the last preceding section the defendant in any suit or action brought in any of the Courts of Judicature established by Her Majesty's Charter is required to give notice of in writing; otherwise such defendant shall be subject to the same consequences for any omission in his answer as a defendant is made subject to by the last preceding section for any omission in his notice. Particulars to be stated in defendant's answer to suit.

10. [3] * * * * * When any publisher or other person shall, within the said territories, before or at the time of the passing of this Act, but after the passing of the said Act of Parliament, 3 & 4 Copyright in encyclopædia, review, etc.

[1] *Cf.* the Copyright Act, 1842 (5 and 6 Vict., c. 45), s. 16 Coll. Stats. Ind., Vol. I.

[2] The words "And it is hereby enacted that, after the passing of this Act" were repealed by the Repealing Act, 1874 (16 of 1874).

[3] The words "And it is hereby enacted that" were repealed by the Repealing Act, 1874 (16 of 1874).

Wm. IV, cap. 85,[1] have projected, conducted and carried on, or shall hereafter project, conduct or carry on, or be the proprietor of any encyclopædia, review, magazine, periodical work or work published in a series of books or parts, or any book whatsoever, and shall have employed or shall employ any persons to compose the same, or any volumes, parts, essays, articles or portions thereof, for publication in, or as part of, the same, and such work, volumes, parts, essays, articles or portions shall have been, or shall hereafter be, composed under such employment, on the terms that Copyright therein shall belong to such proprietor, projector, publisher or conductor, and paid for by such proprietor, projector, publisher or contractor, 3 & 4 Wm. IV, c. 85.

the Copyright in every such encyclopædia, review, magazine, periodical work and work published in a series of books or parts, and in every volume, part, essay, article and portion so composed and paid for, shall be the property of such proprietor, projector, publisher or conductor, who shall enjoy the same rights as if he were the actual author thereof, and shall have such term of Copyright therein as is given to the authors of books by this Act, except only that in the case of essays, articles or portions forming part of and first published in reviews, magazines, or other periodical works of a like nature, after the term of twenty-eight years from the first publication thereof respectively, the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by this Act:

Consent of author to publication singly.

Provided always, that during the term of twenty-eight years the said proprietor, projector, publisher or conductor shall not publish any such essay, article or portion separately or singly without the consent previously obtained of the author thereof or his assigns:

Employé's right to publish separately.

Provided also, that nothing herein contained shall alter or affect the right of any person who shall have been or shall be so employed as aforesaid, to publish any such his composition in a separate form, who, by any contract, express or implied, may have reserved or may hereafter reserve to himself such right; but every author reserving, retaining or having such right shall be entitled to the Copyright in such composition when published in a separate form according to this Act, without prejudice to the right of such proprietor, projector, publisher or conductor as aforesaid.

Rights of proprietor of Copyright on making

11. [2] * * * * * The proprietor of the Copyright in any encyclopædia, review, magazine, periodical work or other work published in a series of books or parts shall be entitled to all the benefits

[1] Coll. Stats. Ind., Vol. I. Short title, "The Government of India Act, 1833—*see* the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

[2] The words, "And it is hereby enacted that" were repealed by the Repealing Act, 1874 (16 of 1874).

of the registration in the office of the Secretary to the Government of India for the Home Department, under this Act, on entering in the said Book of Registry the title of such encyclopædia, review, periodical work or other work published in a series of books or parts, the time of the first publication of the first volume, number or part thereof, or of the first volume, number or part first published after the passing of this Act, in any such work which shall have been published heretofore, and after the passing of the said [1] Act of Parliament, 3 & 4 Wm. IV, cap. 85, and the name and place of abode of the proprietor thereof and of the publisher thereof when such publisher shall not also be the proprietor thereof. entry in registry.

3 & 4 Wm. IV, c. 85.

12. [2] * * * * * All copies of any book wherein there shall be Copyright, and of which entry shall have been made in the said Registry Book, and which shall have been unlawfully printed without the consent of the registered proprietor of such Copyright in writing under his hand first obtained shall be deemed to be the property of the proprietor of such Copyright and who shall be registered as such; and such registered proprietor shall, after demand thereof in writing, be entitled to sue for and recover the same or damages for the detention thereof. Proprietorship of copies of book illegally printed.

13. [2] * * * * If the case be within the jurisdiction of any of the Courts of Judicature established by Her Majesty's Charter, such registered proprietor shall be entitled to sue for and recover such copies or damages for the detention thereof, in an action of detinue from any party who shall detain the same, or to sue for and recover damages for the conversion thereof in an action of trover; and, [3] * if the case be within the jurisdiction of any Zila Court or other local Court as aforesaid, the registered proprietor shall be entitled to sue for and recover such copies or damages for the detention or conversion thereof, in such form as is in use in the said Zila or other local Courts for the recovery of specific personal property or damages for the detention or conversion thereof. Right of Copyright proprietor to sue for and recover copies or damages.

14. [2] * * * * No proprietor of Copyright in any book first published after the passing of the said [1] Act of Parliament 3 & 4 Wm. IV, c. 85, shall maintain, under the provisions of this Act, any action or suit at law or in equity, or any summary proceeding in respect of any Entry in registry to be made before Copyright proprietor can proceed under Act.

3 & 4 Wm. IV, c. 85.

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[1] Coll. Stats. Ind., Vol. I. Short title, "The Government of India Act, 1833—"—*see* the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

[2] The words "And it is hereby enacted, that" in ss. 12 to 16 were repealed by the Repealing Act, 1874 (16 of 1874).

[3] The word "that" was repealed by the Repealing Act, 1876 (12 of 1876).

infringement of such Copyright, unless he shall before commencing such action, suit or proceeding, have caused an entry to be made in the Book of Registry at the office of the said Secretary of such book, pursuant to this Act:

Omission to make entry not to affect Copyright, etc.

Provided always that the omission to make such entry shall not affect the Copyright in any book, nor the right to sue or proceed in respect of the infringement thereof, except the right to sue or proceed in respect of the infringement thereof under the provisions of this Act.

Plea by defendant and special evidence in actions for things done under Act. Defendant to have full costs if successful.

15. [1] * * * * * If any action or suit shall be commenced or brought in any of the Courts of Judicature established by Her Majesty's Charter against any person or persons whomsoever, for doing or causing to be done anything in pursuance of this Act, the defendant or defendants in such action may plead the general issue and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant or the plaintiff shall become non-suited or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath in the said last-mentioned Courts.

Limitation of criminal proceedings for breach of Act.

16. [1] * * * * All [2] * * * * indictments, informations and other criminal proceedings for any offence which shall be committed against this Act shall be brought, sued and commenced within twelve calendar months next after such offence committed, or else the same shall be void and of none effect.

17. [*Saving of pre-existing rights.*] *Rep. by Act XIV of 1870.*

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[1] *See* second foot-note on preceding page.

[2] The words "actions, suits, bills," were repealed by Sch. I of the Indian Limitation Act, 1871 (9 of 1871).

SCHEDULE.

No. 1.

Original Entry of Proprietorship of Copyright of a Book.

Time of making the Entry.	Title of Book.	Name of the Publisher and Place of Publication.	Name and Place of abode of the Proprietor of the Copyright.	Date of first Publication.

No. 2.

Form of Entry of Assignment of Copyright in any Book previously registered.

Date of Entry.	Title of Book.	Assignor of the Copyright.	Assignee of the Copyright.
	(Set out the title of the book and refer to the page of the Registry Book in which the original entry of the Copyright thereof is made.		

ACT No. XV OF 1848 [1].

[*17th June, 1848.*]

An Act to forbid trading by the Officers of the Supreme Courts.

Preamble.

FOR the better discharge of their duties by the officers of the undermentioned Courts of Justice [2]; It is enacted as follows:—

Prohibition, in case of officers of Supreme Courts, against accepting gifts;

holding certain offices; carrying on dealings.

1. No officer of any of the Courts of Judicature established by Royal Charter within the territories subject to the government of the East India Company, or any Court established for the relief of insolvent debtors within the said territories, shall directly or indirectly by himself, or by any other person or persons on his behalf, accept from any person or persons any gift or reward for any act or behaviour in his office, other than his legal salary and fees and profits of office, or hold any office in any bank or public company, except as hereinafter excepted or carry on or be concerned in any dealings as a banker or trader or as agent, factor or broker either for his own advantage or for the advantage of any other person or persons, except such dealings as it may be part of the duty of any such officer by virtue of his office to carry on.

Exemption of officers who are also advocates, etc.

2. This Act shall not be construed to forbid any officer of any of the said Courts, who is also a practising advocate, attorney, solicitor or proctor in any of the said Courts, from taking the usual fees and emoluments of advocates, attorneys, solicitors or proctors, nor to apply to any advocate, attorney, solicitor, proctor, sheriff, assignee, receiver or committee, so far as he is held to be in that capacity merely for some purposes an officer of any of the said Courts.

Holding unpaid office in society.

3. This Act shall not be construed to forbid any officer of any of the said Courts from holding any unpaid office in any society for charitable purposes or for the advancement of knowledge, or for the encouragement of science, art or manufactures.

Punishment for contravention of Act.

4. Every officer of any of the said Courts who shall knowingly offend against this Act shall, on conviction thereof, be liable to be punished by deprivation of his office, and also, by the sentence of the Court before which he shall be convicted, may be declared incapable, and in that case shall become incapable, of being appointed to the same or any other office of the same Court, or to serve Her Majesty [3] * * * * in the territories under the government of the East India Company, or in such part of the said territories as shall be specified in the sentence, or in

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[1] Short title, "Supreme Courts' Officers Trading Act, 1848." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

[2] *Cf.* the Indian High Courts Act, 1861 (24 & 25 Vict., c. 104), s. 1, Coll. Stats. Ind., Vol. II.

[3] The words "or the East India Company" were repealed by the Repealing Act, 1876 (12 of 1876).

the discretion of the Court may be otherwise punished by fine or fine and imprisonment for his misdemeanour as to the Court shall seem fit, regard being had to the nature of his offence.

ACT No. V OF 1850 [1].

[*8th March, 1850.*]

An Act for freedom of the Coasting Trade of India.

Preamble.

12 & 13 Vict., c. 29.

WHEREAS by an Act of Parliament passed in the thirteenth year of the reign of Her Majesty, intituled "An Act to amend the laws in force for the encouragement of British Shipping and Navigation," [2] it is enacted with regard to the Coasting Trade of India that it shall be lawful for the Governor General of India in Council to make any regulations authorizing or permitting the conveyance of goods or passengers from one part of the possessions of the East India Company to another part thereof in other than British ships, subject to such restrictions or regulations as he may think necessary; It is enacted as follows:—

Freedom of ships other than British in coasting trade.

1. Goods and passengers may be conveyed from one part of the territories under the government of the East India Company to another part thereof, in other than British ships, without any restriction, other than is or shall be equally imposed on British ships, for securing payment of duties of customs or otherwise.

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[1] Short title, "The Indian Coasting Trade Act, 1850." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India,	1880, Pt. I, p. 672.
Aden	Ditto	1879, Pt. I, p. 434.
The District of Syhlet . .	Ditto	1879, Pt. I, p. 631.

[2] *See* s. 6 of 12 & 13 Vict., c. 29. This Act was repealed by 17 & 18 Vict., c. 12, s. 4, but s. 6 of it was re-enacted by the Coasting-trade Act (16 & 17 Vict., c. 107), s. 329.

ACT No. XI OF 1850

[*15th March, 1850.*]

An Act to amend [2]Act X of 1841.

Preamble.

FOR amendment of [2]Act X of 1841, it is enacted as follows:—

1. [*Repeal of s. 13 of Act X of 1841.*] *Rep. by Act XIV of 1870.*

Passes under Act X of 1841 to ships of allied Native States wherever built.

2. The passes which, under section 24 of the said Act, may be issued for conferring the privileges and advantages of a British ship, in certain cases, to any ship or vessel built within the dominions of a Native Prince or State in subordinate alliance with, or having subsidiary treaties with, the East India Company, may, after the passing of this Act, be issued in the like cases, and under the same restrictions, to any ship or vessel belonging to any such Native Prince or State, or their subjects, wherever the same may have been built.

Registry of, and passes to, certain coasting vessels.

3. All ships or vessels, of whatever rig and of whatever tonnage, owned by British subjects, entitled to registry under [2] Act X of 1841, or owned by such Native Princes or States, or by their subjects entitled to passes under [2] Act X of 1841, as amended by this Act, employed only in coasting voyages, or between any port of the Continent of India and the Island of Ceylon, may be registered and obtain passes, and the tonnage may be marked, according to such rules [3] as shall be made from time to time by the Governor or Governor in Council of each Presidency.

Fees for certificates of registry of such vessels.

4. The owners of coasting vessels, registered under section 3 of this Act, shall pay for each certificate of registry—

for a vessel not exceeding the burthen of four tons, one rupee;

exceeding four tons and not exceeding twenty tons, five rupees;

exceeding twenty tons and not exceeding eighty tons, seven rupees;

exceeding eighty tons, for each ton two annas; which fees shall be

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[1] Short title, "The Indian Registration of Ships Act (1841) Amendment Act, 1850"—*see* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has been declared by notification under s. 3 of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in Sind (Gazette of India, 1880, Pt. I, p. 672), in Aden (*ib.*, 1879, Pt. I, p. 434), and in the District of Sylhet (*ib.*, 1879, Pt. I, p. 631).

[2] *Supra*, p. 21.

[3] For rules made under this section, *see* Notification No. 513, dated the 21st December, 1877, Genl. Stat. R. & O., Vol. I.

By the Government of—

(1) Bengal, *see* Ben. Loc. Stat. R. & O., Vol. II.

(2) Bombay, *see* Bom. Govt. Gazette, 1873, Pt. I, p. 857, and *ibid*, 1875, p. 922.

(3) Madras, *see* Fort St. George Gazette, 1899, Pt. I, p. 636.

carried to the credit of the Government of the Presidency in which they are levied.

5. This Act shall be construed with and as part of [1] Act X of 1841. **Construction.**

ACT No. XII OF 1850 [2].

[*22nd March, 1850.*]

For avoiding loss by the default of Public Accountants.

For better avoidance of loss through the default of public accountants: It is enacted as follows:— **Preamble.**

1. Every public accountant shall give security for the due discharge of **Public Accountants**

[1] *Supra.*

[2] Short title, "The Public Accountants' Default Act, 1850." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has been declared to be in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), Ben. Code, Vol. I, and in Upper Burma generally (except the Shan States) by s. 4 (*1*) of the Burma Laws Act, 1898 (13 of 1898), Bur. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following other Scheduled Districts, namely :—

The Districts of Thár and Párkár, and the Upper Sindh Frontier	*See* Gazette of India, 1880, Pt. I, p. 672.	
West Jalpáiguri, the Western Hills of Dárjiling, the Dárjiling Tarái and the Damson Sub-Division of the Dárjiling District . . .	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dálbhum and the Kolhán in the District of Singbhum . .	Ditto	1881, Pt. I, p. 504.
Kumáon and Garhwál . .	Ditto	1876, Pt. I, p. 605.
The Scheduled portion of the Mirzápur District . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382
The Scheduled Districts of the Central Provinces . . .	Ditto	1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam, *see* Fort St. George Gazette, 1898, Pt. I, p. 666 and	Ditto	1898, Pt. I, p. 870.

Assam—*see* note below.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

The Tarái of the Province of Agra	*See* Gazette of India, 1876, Pt. I, p. 505.	
The Scheduled Districts of the Punjab (some of the Districts now form part of the N.-W. F. Province, *see* Appendix Punj. & N.-W. Code) . .	Ditto	1883, Pt. I, p. 505.
Ajmer and Merwára . . .	Ditto	1878, Pt. I, p. 380.

to give security.

the trusts of his office, and for the due account of all moneys which shall come into his possession or control, by reason of his office.

Amount and kind of security, and with what sureties.

2. In default of any Act having special reference to the office of any public accountant, the security given shall be of such amount and kind, real or personal, or both, and with such sureties (regard being had to the nature of the office), as shall be required by any [1] rules made or to be made from time to time, by the authority by which each public accountant is appointed to his office, subject to the approval of the Governor or Governor in Council of the Presidency or place.

"Public accountant" defined.

3. Every person is a [2] public accountant within the meaning of this Act who, by reason of any office held by him in the service of the East India Company, is entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to the East India Company, or as Official Assignee or Trustee, or as sarbaráhkár, or in any other official capacity, with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to any other person or persons.[2]

Prosecution of accountants and sureties.

4. The person or persons at the head of the office to which any public accountant belongs may proceed against any such public accountant and his sureties for any loss or defalcation in his accounts, as if the amount thereof were an arrear of land-revenue due to Government.

Enactments applied to proceedings by and against accountants.

5. All Regulations and Acts now or hereafter to be in force for the recovery of arrears of land-revenue due to Government, and for recovery of damages by any person wrongfully proceeded against for any such arrear shall apply, with such changes in the forms of procedure as are necessary to make them applicable to the case, to the proceedings against and by such public accountant.[3]

6. [*Validation of former rules.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

As to the partial repeal of the Act in the Bombay Presidency, *see* the Bombay Land-revenue Code, 1879 (Bom. Act 5 of 1879), s. 2, and sch. A, Bom. Code, Vol. II. As to its repeal in Assam, in which it was declared to be in force by notifications under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Gazette of India, 1878 and 1879, Pt. I, pp. 525 and 631, respectively, *see* the Assam Land and Revenue Regulation, 1886 (1 of 1886), E. B. & A. Code, Vol. I.

[1] For rules made by the Government of—

(1) Bombay, *see* Sindh Official Gazette, 1896, Pt. I, pp. 198, 228, 244, 262 and 276.

(2) Madras, *see* No. 130 of the Standing Orders of the Board of Revenue.

(3) United Provinces, *see* List 3, p. 1 of Vol. I, of U. P. Loc. R. & O.

[2] In the United Provinces every manager or other servant of the Court of Wards entrusted with the receipt, etc., of public money has been declared to be a public accountant within the meaning of this Act, *see* U. P. Court of Wards Act, 1899 (U. P. Act 3 of 1899), U. P. Code, Vol. II.

[3] For the law relating to the recovery of revenue-arrears, *see* the Revenue Recovery Act, 1890 (1 of 1890), Genl. Acts, Vol. IV.

ACT No. XVIII OF 1850 [1].

[*4th April, 1850.*]

An Act for the protection of Judicial Officers.

FOR the greater protection of Magistrates and others acting judicially; It is enacted as follows:— Preamble.

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[1] Short title, "The Judicial Officers' Protection Act, 1850." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

The Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), Bur. Code; in the Angul District by the Angul District Regulation, 1894 (1 of 1894), s. 3, Ben. Code, Vol. I; in the Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (9 of 1874), s. 3, Bur. Code, in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (1 of 1890), s. 3, Bal. Code; in the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Laws and Justice Regulation, 1899 (3 of 1899), Ben. Code, Vol. I, and in the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (Regulation 1 of 1900), E. B. & A. Code, Vol. I.

It has also been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Gen. Acts, Vol. II, to be in force in the following Scheduled Districts, namely:—

The Taluqs of Bhadrachalam, Rakapilli and the Rampa Country	*See* Gazette of India, 1879, Pt. I, p. 630.	
The Scheduled Districts in Ganjam and Vizagapatam, *see* Fort St. George Gazette, 1898, Pt. I, p. 666, and .	Ditto	1898, Pt. I, p. 870.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum . .	Ditto	1881, Pt. I, p. 504.
Sindh	Ditto	1878, Pt. I, p. 482.
West Jalpáiguri and the Western Hills of Dárjiling, the Dárjiling Tarái, and the Damson Sub-division of the Dárjiling District . . .	Ditto	1881, Pt. I, p. 74.
Kumáon and Garhwál . .	Ditto	1876, Pt. I, p. 605.
The Scheduled portion of the Mirzápur District . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Peshawar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N.-W. Code*) .	Ditto	1886, Pt. I, p. 48.

Non-liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders.

1. No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same. [1]

The District of Lahaul . .	*See* Gazette of India,	1886, Pt. I, p. 301.
The Scheduled Districts of the Central Provinces . .	Ditto	1879, Pt. I, p. 771.
Coorg	Ditto	1879, Pt. I, p. 747.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The Districts of Kámrup, Nowgong, Darrang, Sibságar Lakhimpur, Goálpára (excluding the Eastern Duárs) and Cachar (excluding the North Cachar Hills)	Ditto	1878, Pt. I, p. 633.
The Gáro Hills, the Khási and Jaintiá Hills, the Nága Hills, the North Cachar Hills in the Cachar District and the Eastern Duárs in the Goalpárá District . .	Ditto	1897, Pt. I, p. 299.
The Porahat Estate in the Singbhum District . .	Ditto	1897, Pt. I, p. 1059.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

The Tarái of the Province of Agra	*See* Gazette of India,	1876, Pt. I, p. 505.
Ajmer and Merwára . .	Ditto	1879, Pt. I, p. 380.

It has been extended to the Shan States generally by the Second Schedule to the Shan States Laws and Criminal Justice Order, 1895. *See* Burma Gazette, 1895, Pt. I, p. 262, and Bur. Code, p. 606.

It has been applied to the Chin Hills, as regards hill-tribes, by the Chin Hills Regulation, 1896 (5 of 1896), Bur. Code; and to the Baluchistan Agency Territories by the Baluchistan Agency Laws Law, 1890, s. 4 (*1*), Bal. Code.

[1] As to procedure for instituting criminal prosecutions against Judges and public servants, *see* the Code of Criminal Procedure, 1898 (Act V of 1898), s. 197, Genl. Acts, Vol. V.

ACT No. XIX OF 1850 [1].

[*11th April, 1850.*]

Concerning the binding of Apprentices.

FOR better enabling children, and especially orphans and poor Preamble.

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[1] Short title, "The Apprentices Act, 1850." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Gen. Acts, Vol. II.

It has been declared in force in—

Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), Bur. Code.

The Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (9 of 1874), s. 3, Bur. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Gen. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India, 1880, Pt. I, p. 672.	
West Jalpáiguri, the Western Duárs the Western Hills of Dárjiling, the Dárjiling Tarái, and the Damson Sub-division of the Dárjiling District . . .	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribagh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum .	Ditto	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzápur District . . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N-W. Code*) .	Ditto	1886, Pt. I, p. 48.
The Scheduled Districts of the Central Provinces . . .	Ditto	1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam .	Ditto	1898, Pt. I, p. 870.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushai Hills) . .	Ditto	1897, Pt. I, p. 299.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

Kumáon and Garhwál . .	*See* Gazette of India, 1876, Pt. I, p. 606.	
The Tarái of the Province of Agra	Ditto	1876, Pt. I, p. 505.

children brought up by public charity, to learn trades, crafts and employments, by which, when they come to full age, they may gain a livelihood; It is enacted as follows:—

Apprenticing of child between ten and eighteen years old, of child between ten and eighteen years.

1. Any child, above the age of ten, and under the age of eighteen years may be bound apprentice by his or her father or guardian to learn any fit trade, craft or employment, for such term as is set forth in the contract of apprenticeship, not exceeding seven years, so that it be not prolonged beyond the time when such child shall be of the full age of twenty-one years, or, in the case of a female, beyond the time of her marriage.

Evidence of age in questions as to right to service.

2. The age set forth in the contracts shall be evidence of the age of the child, in all questions which arise as to the right of the master to the continuance of the service.

Powers of Magistrate or Justice acting for orphans, etc.

3. Any Magistrate or Justice of the Peace may act with all the powers of a guardian under the Act, on behalf of any orphan, or poor child abandoned by its parents, or of any child convicted before him, or any other Magistrate, of vagrancy, or the commission of any petty offence.

Apprenticing of child brought up by public charity.

4. An orphan or poor child, brought up by any public charity, may be bound apprentice by the governors, directors or managers thereof, as his or her guardians for this purpose.

Apprenticing of such boy in sea service.

5. Any such boy may be bound as an apprentice in the sea service [1] to any of Her Majesty's subjects, being the owner of any registered ship belonging to and trading from any port in the territories under the Government of [2] * * India,[2]* which has been declared to be a registering port under [3] Act X, 1841, to be employed in any such ship the property of such person, commanded by a British subject, and, while so employed, to be taught the craft and duty of a seaman. X of 1841.

6. [*Apprenticing of such boy in ship of the East India Company.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

Who to be agent of master of apprentice serving in ship.

7. The master or commander of any ship in which an apprentice bound to the sea service shall be appointed to serve by the party to whom he is bound shall be deemed the agent of such party for the purpose of this Act.

Form and contents of contract of apprenticeship.

8. Every contract of apprenticeship shall be in writing, according to the form given in the schedule (A) annexed to this Act, or to the like effect, which shall set forth the conditions agreed upon, particularly

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It has been declared, by notification under s. 3 (*b*) of the same Act, not to be in force in the Scheduled District of Lahaul. *See* Gazette of India, 1886, Pt. I, p. 301.

Instruments of apprenticeship executed by a Magistrate under this Act, or by which a person is apprenticed by or at the charge of a public charity, are exempted from stamp-duty by the Stamp Act, 1899 (2 of 1899), Sch. I, Art. No. 9.

[1] As to duty of shipping-masters in this connection, *see* the Indian Merchant Shipping Act, 1859 (1 of 1859), s. 4, *infra*.

[2] The words "the East" and "Company" were repealed by the Repealing Act, 1874 (16 of 1874).

[3] *Supra*, p. 21; *see* s. 2.

specifying the age of the apprentice, the term for which he is bound, and what he is to be taught.

Signatures to contract.

9. Every such contract shall be signed by the person to whom the apprentice is bound, and by the person by whom he is bound, and by the apprentice, when he is of the age of fourteen years or more at the time of binding ; but when the apprentice is bound by the governors, directors or managers of a public charity, the signature of two of them, or of their secretary or officer shall be sufficient on behalf of the persons binding the apprentice.

Contract not valid unless executed as prescribed and deposited.

10. No such contract shall be valid unless it be executed in the manner aforesaid, nor until it has been deposited in the office of the Chief Magistrate of the place or district where it has been executed, or, if the apprentice is bound to the sea service, in the office of the person appointed under [1]Act X, 1841, to make registry of ships at the port where the apprentice is to begin his service ; and the person in whose office any such contract is deposited shall give to each of the parties a copy thereof, certified under his hand, which certified copies shall be received as evidence of the contract, without formal proof of the handwriting of the Magistrate or registering officer.

X of 1891.

Copies to be given to parties.

Alteration of terms of service and termination of contract.

11. The terms of service may be changed at any time during the apprenticeship, or the contract may be determined, with the consent of both parties to the contract or their personal representatives, and with the consent of the apprentice if he is above the age of fourteen years: Provided that the changes agreed to or the termination of the contract shall be expressed in writing on the original contract, with the signature of the proper parties according to section 9[2] of this Act ; and the Magistrate or registering officer shall thereupon make under his hand corresponding endorsements on the office copies, which shall be brought to him at the same time for that purpose.

Assignment of apprentice to new master.

12. The master of any apprentice bound under this Act may, with the consent of the person by whom he was bound, and with the consent of the apprentice if he is above the age of fourteen years, assign such apprentice to any other person, who is willing to take him for the residue of his apprenticeship, and subject to the conditions thereof : Provided that such person shall by endorsement under his own hand on the contract, declare his acceptance of such apprentice, and acknowledge himself bound by the agreements and covenants therein mentioned, to be performed on the part of the master, and that the consent of the other parties aforesaid shall be expressed in writing on the same, and signed by them respectively : And every such assignment shall be

[1] *Supra*, p. 21.

[2] The figure " 9 " was substituted for the figure " 8 " by the Amending Act, 1891 (12 of 1891), Genl. Acts, Vol. IV.

certified on the office copies of the contract under the hand of the Magistrate or registering officer according to the form given in schedule (B) annexed to this Act.

Powers of Magistrate in case of complaint by apprentice against master.

13. Upon complaint made to any Magistrate in the said territories [1], by or on behalf of any apprentice bound under this Act, of refusal or neglect to provide for him, or to teach him according to the contract of apprenticeship, or of cruelty, or other ill-treatment by his master, or by the agent under whom he shall have been placed by his master, the Magistrate may summon the master or his agent, as the case may be, if he shall be within his jurisdiction, to appear before him at a reasonable time, to be stated in the summons, to answer the complaint ;

and at such time, whether the master or his agent be present or not (service of the summons being proved), may examine into the matter of the complaint; and, upon proof thereof, may cancel the contract of apprenticeship, and assess upon the offender, whether he shall be the master or his agent, a reasonable sum for behoof of the apprentice, not exceeding four times the amount of the premium paid upon the binding, or if no premium, or a less premium than fifty rupees was paid, not exceeding two hundred rupees;

and, if the offender shall not pay the sum so assessed, may levy the same by distress and sale of his goods and chattels, and, if the offender shall not be the master but his agent, by distress and sale of the goods and chattels of the master also.

Powers of master of his agent to chastise apprentice. Liability of master or agent for assault, etc.

14. No contract of apprenticeship shall be cancelled, nor shall any master or his agent be liable to any criminal proceeding, on account of such moderate chastisement for misbehaviour, given to any apprentice by his master or the agent of his master, as may lawfully be given by a father to his child; and the provision for enabling the contract of apprenticeship to be cancelled shall not bar any criminal proceeding against any master or his agent for an assault or other offence committed against his apprentice, for which he would be liable to be punished had it been against his child, whether or not any proceedings be taken for cancelling the contract of apprenticeship.

Power of Magistrate in case of complaint by master against apprentice.

15. Upon complaint made to any Magistrate, by or on behalf of the master of any apprentice bound to him under this Act, of any ill-behaviour of such apprentice, or if such apprentice shall have absconded, the Magistrate may issue his warrant for apprehending such apprentice, and may hear and determine the complaint, and punish the offender by an order for keeping the offender, if a boy, in confinement in any debtor's prison or other suitable place, not being a criminal gaol, for any time not exceeding one month, of which one week may be in solitary

[1] *See* s. 5, *supra.*

confinement, during which time such allowance shall be made for his subsistence by the master or his agent as the Magistrate shall order; and, if the offender be a boy of not more than fourteen years of age, may order him to be privately whipped: or, if the offender be a girl or in the case of any boy, the Magistrate deem any such punishment unfit, he may pass an order empowering the master of the apprentice or his agent to keep the offender in close confinement in his own house, or on board the vessel to which he belongs, upon bread and water, or such other plain food as may be given without injury to the health of the apprentice, for a period not exceeding one month.

Cancelment of contract for misconduct of apprentice.

16. Upon complaint of wilful and repeated ill-behaviour on the part of the apprentice, and on the demand of the master, the Magistrate may order the contract of apprenticeship to be cancelled, whether or not the charge is proved; but only with the consent of the apprentice and of his father or guardian, if the charge is not proved; and such cancelling shall be with or without refund of the whole or part of any premium that may have been paid to the master on binding such apprentice, as to the Magistrate seems fit on consideration of the case; and all sums so refunded shall be applied under the direction of the Magistrate for behoof of the apprentice.

Appropriation of sum recovered for apprentice on cancelment of contract.

17. The Magistrate may order any sum recovered for behoof of the apprentice on cancelling the contract to be either laid out in binding him to another master, or otherwise for his benefit, or to be paid to the person by whom any premium was paid when he was bound apprentice.

Limitation of complaint of master against apprentice;

18. No Magistrate shall entertain a complaint on the part of a master against an apprentice under this Act unless it be brought within one month after the cause of complaint arose, or, if the cause of complaint arose on board ship during a voyage, within one month after the arrival thereof at a port or place in the said territories; and no Magistrate shall entertain a complaint on the part of an apprentice against his master or the agent of his master under this Act unless it be brought within three months after the cause of complaint arose, or, if the cause of complaint arose on board ship during a voyage, within three months after the arrival thereof at a port or place in the said territories.

of apprentice against master.

Effect of death of master during apprenticeship.

19. If the master of any apprentice shall die before the end of the apprenticeship, the contract of apprenticeship shall be thereby determined; and a proportionate part, corresponding to the unexpired portion of the term of any premium, which shall have been paid to such master on the binding of the apprentice to him, shall be returned by the executors or administrators out of the estate of the deceased to the person or persons who shall have paid the same; unless the executors or administrators of the deceased master shall continue the business in which such apprentice shall have been employed, and shall, within three months

Offer by representative of master to

continue apprentice.

from the death of the late master, make offer in writing to keep the apprentice on the terms of the original contract; in which case the estate of the deceased shall be discharged from all liabilities on account of such premium.

Offer to be certified on original contract and copies.

20. If such offer to keep the apprentice shall be made as aforesaid, the same shall be fully expressed and certified by the executors [1][or] administrators on the original contract of apprenticeship, and also on the office copies thereof, by the Magistrate or registering officer; and the apprentice shall be bound to the executors or administrators so keeping him for the remaining term of his apprenticeship.

Maintenance of apprentice whose master dies.

21. Any apprentice bound under this Act, whose master shall die during the apprenticeship, shall be entitled to maintenance for three months from and after the death of his master, out of the assets left by him: Provided that during such three months such apprentice shall continue to live with, and serve as an apprentice, the executors or administrators of such master, or such person as they appoint.

Apprentice to continue to serve.

Effect of insolvency of master during apprenticeship.

22. The apprentice of any person against whom a commission of bankruptcy shall be issued, or who shall be adjudged to have committed an act of insolvency, during the apprenticeship, shall be discharged from all obligation under the contract of apprenticeship; and, if any premium was paid on binding him as an apprentice, he or a person by whom he was bound shall be entitled to claim the amount thereof as a debt against the estate of the bankrupt or insolvent.[2]

Persons amenable to jurisdiction of Magistrates' Courts.

23. For the purposes of this Act all British subjects, wherever or of whatever parents born, as well as other persons in the territories under the Government of [3] * * India,[3]* without the towns of Calcutta and Madras and the town and island of Bombay, shall be amenable to the jurisdiction of the Courts and Magistrates of India.

Appeal from orders of Mufassal Magistrates.

24. An appeal shall lie from any order passed by any Magistrate without the said towns and island to the Court of Session to which such Magistrate is subordinate, provided the appeal is made within one month from the date of the order.

Interpretation of terms.

25. In this Act the words "master", "owner", "person", and the pronoun "he" shall be understood to include several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless there is something in the context repugnant to such construction.

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[1] The word "or" was substituted for the word "and" by the Amending Act, 1891 (12 of 1891), Genl. Acts, Vol. IV.

[2] *Cf.* the Bankrupt Law Consolidation Act, 1849 (12 & 13 Vict., c. 106), s. 170.

[3] The words "the East" before "India" and the word "Company" after the word "India" were repealed by the Repealing Act, 1874 (16 of 1874).

SCHEDULE A.

Form of Agreement.

This Agreement made the day of in the year between *A. B.*, of , and *C .D.*, of witnesseth that the said *A. B.* doth this day bind *E. F.*, a boy (or girl) of the age of years completed, son (or daughter) of the said *A. B.* (or otherwise describing the relation in which *A. B.* and *E. F.* stand), to dwell with and serve the said *C. D.*, as an apprentice, from this day forth for years (in the case of a girl add, or until the time of her marriage, which shall first happen), during all which term the said apprentice shall duly and faithfully serve the said *C. D.*, according to his (or her) skill and ability in all lawful business, and demean and behave himself (or herself) honestly, orderly and obediently, in all things, towards the said *C. D.* and his (or her) family. And the said *C. D.* for himself (or herself) and his (or her) executors and administrators, in consideration [of the premium or sum of paid by the said *A. B.* to the said *C. D.*, the receipt whereof the said *C.D.* hereby acknowledges, and] of the faithful service of the said *E.F.*, doth covenant and agree with the said *A. B.*, his (or her) executors and administrators, that he (or she) will teach or cause to be taught to the said *E. F.*, in the best way and manner that he (or she) can, the trade (craft or employment) of a during the said term; and will also, during the said term, find and allow unto the said apprentice good, wholesome and sufficient food, clothes, lodging, washing, and all other things necessary, fit and reasonable for an apprentice: (and further, *here insert any special covenants*).

If there is no premium the words between brackets may be omitted.

In witness whereof the parties have hereunto set their hands and seals the day and year above written.

A. B. L. S.

C. D. L. S.

SCHEDULE B.

Form of Order of Assignment.

(To be endorsed on the Agreement.)

Be it known to all men that on the day of in the year personally appeared before *G. H.*, Magistrate of , *C. D.*, of with *E. F.*, his (or her) apprentice and *J. K.*, of , and desired that the agreement of apprenticeship whereby the said *E. F.* was bound to the said *C. D.* might be assigned and made over to the said *J. K.*, and the said *G. H.*, having satisfied himself, by personal examination of the said *E. F.* and by other lawful ways and means, that such assignment is for the benefit of the said *E. F.*, and is made with the consent of (the said *E. F.*, and of) all persons whose consent thereunto by law is required, doth allow such assignment; and the contract of apprenticeship whereby the said *E. F.* was on the day of in the year bound to the said *C. D.* as an apprentice to learn the trade (craft or employment) of a shall henceforth endure, unto the end of the said term, as if the said *J. K.* had been originally party to the said deed, and had executed the same, in the place and stead of the said *C. D.*, and shall be bound, for himself (or herself), his (or her) executors or administrators, to fulfil the covenants by the said *C. D.* to be performed, and the said *E. F.* shall henceforth be bound unto the said *J. K.*, in like manner as he (or she) was by the said agreement bound unto the said *C. D.*

If E. F. is not above the age of fourteen years, the words between brackets may be omitted.

C. D. *E. F.* *J. K.*

In witness whereof the said *C.D.*, *E.F.*, and *J.K.* have hereunto set their hands before me the day and year above written.

G. H. Magistrate.

ACT No. XXI OF 1850 [1].

[*11th April, 1850.*]

An Act for extending the principle of section 9, Regulation VII, 1832, of the Bengal Code throughout the Territories subject to the Government of the East India Company.

Ben. Reg. VII of 1832.

WHEREAS it is enacted by section 9, Regulation VII, 1832, of the Preamble.

[1] Short title, "The Caste Disabilities Removal Act, 1850." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Laws and Justice Regulation, 1899 (3 of 1899), Ben. Code, Vol. I; in the Arakan Hill District (with modifications) by the Arakan Hill District Laws Regulation, 1874 (9 of 1874), s. 3, Bur. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India,	1880, Pt. I, p. 672.
West Jalpáiguri	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in District of Singbhum	Ditto	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzápur District	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.
The Districts of Peshawar Hazára, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Peshawar and Kohát, now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N.-W. Code*)	Ditto	1886, Pt. I, p. 48.
The District of Lahaul	Ditto	1886, Pt. I, p. 301.
The Scheduled Districts of the Central Provinces	Ditto	1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam	Ditto	1898, Pt. I, p. 870.
Coorg	Ditto	1879, Pt. I, p. 747.
The District of Sylhet	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushai Hills)	Ditto	1897, Pt. I, p. 299.
The Porahat Estate in the Singbhum District	Ditto	1897, Pt. I, p. 1059.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

Upper Burma generally (except the Shan States)	*See* Gazette of India,	1898, Pt. I, p. 89. and *ibid* 1899, Pt. I, p. 98.

Bengal Code,[1] that "whenever in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindu and the other of the Muhammadan persuasion, or where one or more of the parties to the suit shall not be either of the Muhammadan or Hindu persuasions, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled; and whereas it will be beneficial to extend the principle of that enactment throughout the territories subject to the government of the East India Company; It is enacted as follows:—

Law or usage which inflicts forfeiture of, or affects, rights on change of religion or loss of caste to cease to be enforced.

1. So much of any law or usage now in force within the territories subject to the government of the East India Company as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of, any religion, or being deprived of caste, shall cease to be enforced as law in the Courts of the East India Company, and in the Courts established by Royal Charter within the said territories.

ACT No. XXXIV OF 1850.[2]

[23rd August, 1850.]

Preamble.

An Act for the better Custody of State Prisoners.

WHEREAS doubts have been entertained whether State prisoners

Kumáon and Garhwál . . *See* Gazette of India, 1876, Pt. I, p. 606.
The Tarái of the Province of Agra . . . . . Ditto 1876, Pt. I, p. 505.

[1] Bengal Regulation 7 of 1832 is repealed by the Bengal Civil Courts Act, 1871 (6 of 1871), which was repealed by the Bengal, North-Western Provinces and Assam Civil Act, 1887 (12 of 1887), E. B. and A. Code, Vol. I.

[2] Short title, "The State Prisoners Act, 1850." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has been declared in force in the Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (9 of 1874), s. 3, Bur. Code; in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (1 of 1890), s. 3, Bal. Code; in the Angul District by the Angul District Regulation, 1894 (1 of 1894), s. 3, Ben. Code, Vol. I; in the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Laws and Justice Regulation, 1899 (3 of 1899), s. 3, Ben. Code, Vol. I; in Upper Burma generally, except the Shan States, by the Burma Laws Act, 1898 (13 of 1898), s. 4 (*1*) and Sch. I, Bur. Code; in the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (Reg. 1 of 1900), E. B. & A. Code, Vol. I.

It has been extended to the Shan States generally by the Second Schedule to the Shan States Laws and Criminal Justice Order, 1895. *See* Burma Gazette, 1895, Pt. I, p. 262, and Bur. Code.

It has been applied to the Baluchistan Agency Territories by the Baluchistan Agency Laws Law, 1890, Bal. Code.

It has also been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely:—

Sindh *See* Gazette of India, 1880, Pt. I, p. 672.
Aden Ditto 1879, Pt. I, p. 434.

Ben. Reg. III of 1818.

confined under [1] Regulation III, 1818, of the Bengal Code can be lawfully detained in any fortress, jail or other place within the limits of jurisdiction of any of the Supreme Courts of Judicature established by Royal Charter, and it is expedient that such doubts be removed, and the powers of the said Regulation extended to all the territories under the government of the East Indian Company; It is enacted as follows:—

Ben. Reg. III of 1818.

1. The warrant of commitment of any State prisoner, under [1] Regulation III, 1818, of the Bengal Code, may be directed to the Officers to whom warrant of

West Jalpáiguri and the Western Dvárs . . .	*See* Gazette of India, 1881, Pt. I, p. 74.	
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum .	Ditto	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzápur District . . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N.-W. Code*) .	Ditto	1886, Pt. I, p. 48.
The District of Lahaul . .	Ditto	1886, Pt. I, p. 301.
The Scheduled Districts of the Central Provinces . . .	Ditto	1879, Pt. I, p. 771.
The District of Sylhet . ,	Ditto	1879, Pt. I, p. 631.
The Districts of Kámrup, Darrang, Naugong, Sibságar, Lakhimpur, Gáro Hills, Khási and Jaintiá Hills, Nágá Hills, Cachar and Goálpára	Ditto	1887, Pt. I, p. 78.
The Mokokchang Sub-division of the Nágá Hills District .	Ditto	1891, Pt. I, p. 252.
The Porahat Estate in the Singbhum District . .	Ditto	1897, Pt. I, p. 1059.

It has been extended, by notification, under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

Kumáon and Garhwál . .	*See* Gazette of India,	1876, Pt. I, p. 606.
Ajmer and Merwára . .	Ditto	1878, Pt. I, p. 380.
The Andaman and Nicobar Islands	Ditto	1882, Pt. I, p. 148.

[1] Bengal Code, Vol. IV.

commitment of State prisoner under Ben. Regulation III of 1818 may be addressed.

Sheriff of the jail of any of the Supreme Courts of Judicature established by Royal Charter in the said territories, or to the commandant of any fortress, or to the officer in charge of any jail or other place, in which it is deemed expedient that such State prisoner be confined, in any part of the said territories; and such warrant shall be sufficient authority for the detention of such State prisoner in the fortress, jail or other place mentioned in the warrant.

Regulation III of 1818 extended.

2. [1] Regulation III, 1818, of the Bengal Code, shall be extended and applied to every Sheriff, commandant or officer having any State prisoner in custody under the said Regulation, as explained and extended by this Act [2]. Ben. Reg. III of 1818.

3. [*Confinement of State prisoners legalized.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

ACT No. XXXVII OF 1850 [3].

[*1st November, 1850.*]

For regulating Inquiries into the behaviour of Public Servants.

WHEREAS it is expedient to amend the law for regulating inquiries

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[1] Bengal Code, Vol. IV.

[2] Prisoners detained under this Act are not affected by section 491 of the Code of Criminal Procedure, 1898 (Act 5 of 1898). *See* s. 491, Genl. Acts, Vol. V.
See also Act III of 1858, *infra*.

[3] Short-title, "The Public Servants (Inquiries) Act, 1850. *See* the Public Servants (Inquiries) Act (1850) Amendment Act, 1897 (1 of 1897), s. 1, Genl. Acts, Vol. IV.
This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.
It has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Laws and Justice Regulation, 1899 (3 of 1899), s. 3, Ben. Code, Vol. I; the Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (9 of 1874), s. 3, Bur. Code; in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 4 (*1*), and Sch. I, Bur. Code.
It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India,	1880, Pt. I, p. 672.
West Jalpáiguri . . .	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dálbhum and the Kolhán in the District of Singbhum . .	Ditto	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzápur District . . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar . . .	Ditto	1879, Pt. I, p. 382.
The Districts of Pesháwar, Hazára, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera*		

into the behaviour of public servants not removable [1][from their appointments] without the sanction of Government, and to make the same uniform throughout the territories unde the Government of [2][India]; It is enacted as follows:—

1. [*Repeal of Acts.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

Articles of charge to be drawn out for public inquiry into conduct of certain public servants.

2. Whenever the Government [3] shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the service of [4][the Government not removable from his appointment without the sanction of the Government], it shall cause the substance of the imputations to be drawn into distinct articles of charge, and shall order a formal and public inquiry to be made into the truth thereof.

Authorities to whom inquiry may be committed. Notice to accused.

3. The inquiry may be committed either to the Court, Board or other authority to which the person accused is subodinate, or to any other person or persons, to be specially appointed by the Government, commissioners for the purpose: notice of which commission shall be given

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Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and ibid, *1902, Pt. I, p. 575; but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N.-W. Code)* . *See* Gazette of India, 1886, Pt. I, p. 48.

The District of Lahaul . .	Ditto	1886, Pt. I, p. 301.
The Scheduled Districts of the Central Provinces . . .	Ditto	1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam .	Ditto	1898, Pt. I, p. 870.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushai Hills) . .	Ditto	1897, Pt. I, p. 299.
The Porahat Estate in the Singbhum District . .	Ditto	1897, Pt. I, p. 1059.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

Kumáon and Garhwál . .	*See* Gazette of India,	1876, Pt. I, p. 606.
The Tarái of the Province of Agra	Ditto	1876, Pt. I, p. 505.

As to the application of this Act in cases under the Bombay and Madras Civil Courts Acts, *see* the Bombay Civil Courts Act, 1869 (14 of 1869), s. 33, and the Madras Civil Courts Act, 1873 (3 of 1873), s. 20, Bom. Code, Vol. I, and the Mad. Code, Vol. I. For application of this Act to enquiries into the alleged misconduct of a Munsif, *see* the Bengal, North-Western Provinces and Assam Civil Courts Act, 1887 (12 of 1887), s. 28 (*3*), E. B. & A. Code, Vol. I.

[1] These words were inserted by the Public Servants (Inquiries) Act (1850) Amendment Act, 1897 (1 of 1897), s. 2, Genl. Acts, Vol. IV.

[2] The word "India" was substituted for the words "the East India Company" by Act 1 of 1897, s. 2.

[3] For definition of the word "Government" see s. 23, *infra*.

[4] These words were substituted for the words "the East India Company, not removed from his office without the sanction of the same Government," by Act 1 of 1897.

to the person accused ten days at least before the beginning of the inquiry.

Conduct of Government prosecution.

4. When the Government shall think fit to conduct the prosecution, it shall nominate some person to conduct the same on its behalf.

Charge by accuser to be written and verified.

Penalty for false accusation.

Institution of inquiry by Government.

5. When the charge shall be brought by an accuser, the Government shall require the accusation to be reduced to writing, and verified by the oath or solemn affirmation of the accuser; and every person who shall wilfully and maliciously make any false accusation under this Act, upon such oath or affirmation, shall be liable to the penalties of perjury, but this enactment shall not be construed to prevent the Government from instituting any inquiry which it shall think fit, without such accusation on oath or solemn affirmation as aforesaid.

Security from accuser left by Government to prosecute.

6. Where the imputations shall have been made by an accuser, and the Government shall think fit to leave to him the conduct of the prosecution, the Government before appointing the commission shall require him to furnish reasonable security that he will attend and prosecute the charge thoroughly and effectually, and also will be forthcoming to answer any counter-charge or action which may be afterwards brought against him for malicious prosecution or perjury or subornation of perjury, as the case may be.

Power of Government to abandon prosecution and to allow accuser to continue it.

7. At any subsequent stage of the proceedings, the Government may, if it think fit, abandon the prosecution, and in such case may, if it think fit, on the application of the accuser, allow him to continue the prosecution, if he is desirous of so doing, on his furnishing such security as is hereinbefore mentioned.

Powers of commissioners.

8. The commissioners shall have the same power of punishing contempts and obstructions to their proceedings, as is given to Civil and Criminal Courts by Act XXX, 1841,[1] and shall have the same powers for the summons of witnesses, and for compelling the production of documents, and for the discharge of their duty under the commission, and shall be entitled to the same protection as the Zila and City Judges, except that all process to cause the attendance of witnesses or other compulsory process, shall be served through and executed by the Zila or City Judge in whose jurisdiction the witness or other person resides, on whom the process is to be served, and if he resides within Calcutta, Madras or Bombay, then through the Supreme Court of Judicature[2] there. When the commission has been issued to a Court, or other person or persons having power to issue such process in the exercise of their ordinary authority, they may also use all such power for the purposes of the commission.

Their protection.

Service of their process.

Powers of Court, etc., acting under commission.

[1] The Obstructions to Justice Act, 1841 (30 of 1841), has since been repealed by the Repealing Act, 1868 (8 of 1868).

[2] *See* the Indian High Courts Act, 1861 (24 & 25 Vict., c. 104), s. 11, Coll. Stat. Ind., Vol. I.

Penalty for disobedience to process.

9. All persons disobeying any lawful process issued as aforesaid for the purposes of the commission shall be liable to the same penalties as if the same had issued originally from the Court or other authority through whom it is executed.

Copy of charge and list to be furnished to accused.

10. A copy of the articles of charge, and list of the documents and witnesses by which each charge is to be sustained, shall be delivered to the person accused, at least three days before the beginning of the inquiry, exclusive of the day of delivery and the first day of the inquiry.

Procedure at beginning of inquiry.

11. At the beginning of the inquiry the prosecutor shall exhibit the articles of charge to the commissioners, which shall be openly read, and the person accused shall thereupon be required to plead "guilty" or "not guilty" to each of them, which pleas shall be forthwith recorded with the articles of charge. If the person accused refuses, or without reasonable cause neglects, to appear to answer the charge either personally or by his counsel or agent, he shall be taken to admit the truth of the articles of charge.

Non-appearance of accused and admission of charge.

Prosecutor's right of address.

12. The prosecutor shall then be entitled to address the commissioners in explanation of the articles of charge, and of the evidence by which they are to be proved: his address shall not be recorded.

Evidence for prosecution and examination of witnesses.

Re-examination by prosecutor.

13. The oral and documentary evidence for the prosecution shall then be exhibited; the witnesses shall be examined by or on behalf of the prosecutor and may be cross-examined by or on behalf of the person accused. The prosecutor shall be entitled to re-examine the witnesses on any points on which they have been cross examined, but not on any new matter, without leave of the commissioners, who also may put such questions as they think fit.

Power to admit or call for new evidence for prosecution.

Accused's right to adjournment.

14. If it shall appear necessary before the close of the case for the prosecution, the commissioners may in their discretion allow the prosecutor to exhibit evidence not included in the list given to the person accused, or may themselves call for new evidence; and in such case the person accused shall be entitled to have, if he demand it, an adjournment of the proceedings for three clear days, before the exhibition of such new evidence exclusive of the day of adjournment and of the day to which the proceedings are adjourned.

Defence of accused.

To be recorded only when written.

15. When the case for the prosecution is closed, the person accused shall be required to make his defence, orally or in writing, as he shall prefer. If made orally, it shall not be recorded; if made in writing, it shall be recorded, after being openly read, and in that case a copy shall be given at the same time to the prosecutor.

Evidence for defence, and examination of witnesses.

16. The evidence for the defence shall then be exhibited, and the witnesses examined, who shall be liable to cross-examination and re-examination and to examination by the commissioners according to the like rules as the witnesses for the prosecution.

17. [*Examination of witnesses and evidence by prosecutor.*] *Rep. by the Repealing Act, 1876 (XII of 1876).*

Notes of oral evidence.

18. The commissioners or some person appointed by them shall take notes in English of all the oral evidence, which shall be read aloud to each witness by whom the same was given, and, if necessary, explained to him in the language in which it was given, and shall be recorded with the proceedings.

Inquiry when closed with defence.

Prosecutor when entitled to reply and give evidence.

Accused no entitled to adjournment.

19. If the person accused makes only an oral defence, and exhibits no evidence, the inquiry shall end with his defence; if he records a written defence, or exhibits evidence, the prosecutor shall be entitled to a general oral reply on the whole case, and may also exhibit evidence to contradict any evidence exhibited for the defence, in which case the person accused shall not be entitled to any adjournment of the proceedings, although such new evidence were not included in the list furnished to him.

Power to require amendment of charge and to adjourn.

20. When the commissioners shall be of opinion that the articles of charge or any of them, are not drawn with sufficient clearness and precision, the commissioners may, in their discretion, require the same to be amended, and may thereupon, on the application of the person accused, adjourn the inquiry for a reasonable time. The commissioners may also, if they think fit, adjourn the inquiry from time to time, on the application of either the prosecutor or the person accused, on the ground of sickness or unavoidable absence of any witness or other reasonable cause. When such application is made and refused, the commissioners shall record the application, and their reasons for refusing to comply with it.

Reasons for refusing adjournment to be recorded.

Report of commissioners' proceedings.

21. After the close of the inquiry the commissioners shall forthwith report to Government their proceedings under the commission, and shall send with the record thereof their opinion upon each of the articles of charge separately, with such observations as they think fit on the whole case.

Power to call for further evidence or explanation.

Inquiry into additional articles of charge.

Reference of report of special commissioners.

Final orders.

22. The Government, on consideration of the report of the commissioners, may order them to take further evidence, or give further explanation of their opinions. It may also order additional articles of charge to be framed, in which case the inquiry into the truth of such additional articles shall be made in the same manner as is herein directed with respect to the original charges. When special commissioners have been appointed, the Government may also, if it thinks fit, refer the report of the commissioners to the Court or other authority to which the person accused is subordinate, for their opinion on the case; and will finally pass such orders thereon as appear just and consistent with its powers in such cases.

Powers of Government under this [1] Act by whom exerciseable.

23. [1] The powers of the Government under this Act may in all cases be exercised by the Governor General in Council, and when the person accused can be removed from his appointment by the Local Government, those powers may also be exercised by the Local Government.

Saving of enactments as to dismissal of certain officers. Commission under Act for their trial.

24.[2] Nothing in this Act shall be construed to repeal any Act or Regulation in force for the suspension or dismissal of Principal and other Sadr Amins or of Deputy Magistrates or Deputy Collectors, but a commission may be issued for the trial of any charge against any of the said officers, under this Act, in any case in which the Government shall think it expedient.

Saving of power of removal without inquiry under Act.

25. Nothing in this Act shall be construed to affect the authority of Government, for suspending or removing any public servant for any cause without an inquiry under this Act.

ACT No. VIII OF 1851 [3].

[*4th July, 1851.*]

An Act for enabling Government to levy Tolls on Public Roads and Bridges.

Preamble.

WHEREAS it is expedient to enable Government to levy tolls upon roads and bridges; It is enacted as follows:—

1. [*Repeal of Acts.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

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[1] S. 23 as it now stands was enacted in substitution for the original section by the Public Servants (Inquiries) Act (1850) Amendment Act, 1897 (1 of 1897), s. 4, Genl. Acts, Vol. IV.

The original section was as follows:—

"23. The word "Government" as used in this Act means the Governor General in Council, the Governor or Deputy Governor of the Presidency of Fort William in Bengal, the Governor in Council of the Presidencies of Fort St. George and Bombay, respectively, and the Lieutenant Governor of the North-Western Provinces of Bengal, whose sanction is necessary for the removal of the person accused."

[2] Repealed, as to the Lower Provinces and North-Western Provinces of Bengal, by the Principal Sadr Amins Act, 1868 (16 of 1868).

[3] Short title, "The Indian Tolls Act, 1851." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

Act 8 of 1851 was amended by the Indian Tolls Act, 1864 (15 of 1864), which is to be read with and taken as part of it. *See* s. 1 of Act 15 of 1864, *infra.*

For power to extend the territorial operation of Act 8 of 1851, *see ib.* s. 3.

For rules and orders under this Act in—

Madras, *see* Madras Local R. & O., Vol. I, p. 10.

Punjab, *see* Punjab List of R. & O., p. 3.

The Central Provinces, *see* the Central Provinces Loc. R. & O., p. 3.

Under s. 1 of the Indian Tolls Act, 1888 (8 of 1888), Acts 8 of 1851 and the Indian Tolls Act, 1864 (15 of 1864), are to be deemed in force throughout the territories administered by the Lieutenant-Governor of the Punjab on the 5th September, 1888, and from the 21st August, 1857, and the 24th March, 1864, respectively, to have been in force in the territories for the time being administered as part of the Punjab (which then included the Districts now forming the North-West Frontier Province). *See* Genl. Acts Vol. III.

Power to cause levy of tolls on roads and bridges within certain rates,

and to appoint collectors.

Collectors' responsibilities.

2. [1] The Governor of the Presidency of Fort William in Bengal, the Lieutenant-Governor of the North-Western Provinces of Bengal [2] [and] the Governor of the Presidency of Fort St. George in Council [3] * * * *, may cause such rates of toll, not exceeding the rates mentioned in the schedule annexed to this Act, as they respectively think fit, to be levied upon any road or bridge which has been, or shall hereafter be, made or repaired at the expense of the Government; and may place the collection of such tolls under the management of such persons as may appear to them proper: and all persons employed in the management and collection of such tolls shall be liable to the same responsibilities as would belong to them if employed in the collection of the land-revenue.

Act 8 of 1851 has been repealed in the Presidency of Bombay by the Bombay Tolls Act, 1875 (3 of 1875), s. 1, Bom. Code, Vol. II.

It has been extended under s. 3 of Act 15 of 1864 (*infra*) to Ajmer and Merwara, *see* Gazette of India, 1889, Pt. II, p. 562.

It has been declared in force in the Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (9 of 1874), s. 3, Bur. Code; in the Central Provinces by the Central Provinces Laws Act, 1875 (20 of 1875), s. 3, Central Provinces Code; in the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Laws and Justice Regulation, 1899 (3 of 1899), s. 3, Ben. Code, Vol. I; and in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), Bur. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and Kolhán in the District of Singbhum . .	*See* Gazette of India, 1881, Pt. I, p. 504.	
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N. W. Code*) .	Ditto	1886, Pt. I, p. 48.
The District of Lahaul . .	Ditto	1886, Pt. I, p. 301.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the Scheduled District of Coorg. *See* Gazette of India, 1878, Pt. I, p. 45, and to the Scheduled Districts in Ganjam and Vizagapatam, *see ib.*, 1899, Pt. I, p. 720.

[1] The authority of the Local Government in any part of British India not specified in s. 2 to which this Act and the Indian Tolls Act, 1864 (15 of 1864), may be or have been extended, is to be the same as if it had been specified in s. 2. *See* the Indian Tolls Act, 1888 (8 of 1888), s. 2 (*a*), Genl. Acts.

[2] The word " and " was inserted by Act 8 of 1888, s. 5, Genl. Acts.

[3] The words " and the Governor of the Presidency of Bombay in Council " were repealed by Act 8 of 1888, s. 5.

Their powers for recovery of toll.

3. In case of non-payment of any such toll on demand, the officers appointed to collect the same may seize any of the carriages or animals on which it is chargeable, or any part of their burden of sufficient value to defray the toll; and, if any toll remains undischarged for twenty-four hours, with the cost arising from such seizure, the case shall be brought before the officer appointed to superintend the collection of the said toll, who may sell the property seized for discharge of the toll, and all expenses occasioned by such non-payment, seizure and sale, and cause any balance that may remain to be returned, on demand, to the owner of the property; and the said officer, on receipt of the property, shall forthwith issue a notice that, at noon of the next day, exclusive of Sunday, or any close holiday, he will sell the property by auction:

Release of seized property on tender of dues.

Provided that, if, at any time before the sale has actually begun, the person whose property has been seized shall tender the amount of all the expenses incurred, and of double the toll payable by him, the said officer shall forthwith release the property seized.

Exemptions from payment of toll.

4. No tolls shall be paid for the passage [1] * * * * * * * * * of Police-officers on duty, or of any person or property in their custody, [2] but no other exemption [3] from payment of the toll levied under this Act shall be allowed.

Assistance of collectors by Police-officers.

5. All Police-officers shall be bound to assist the toll-collectors, when required, in the execution of this Act; and, for that purpose, shall have the same power which they have in the exercise of their common police-duties.

Penalty for offences under Act.

6. Every person, other than the persons appointed to collect the tolls under this Act, who shall levy or demand any toll on any public road or bridge, or for passing through any bazar situated thereon, and also every person who shall unlawfully and extortionately demand, or take any other or higher toll than the lawful toll, or under colour of this Act seize or sell any property knowing such seizure or sale to be unlawful, or in any manner unlawfully extort money or any valuable thing from any person under colour of this Act, shall be liable on conviction before a Magistrate to imprisonment for any term not exceeding six calendar months, or to fine not exceeding two hundred rupees, any part of which fine may be awarded by the Magistrate to the person aggrieved; but this remedy shall not be deemed to bar or affect his right to have redress by suit in the Civil Court * * * [4].

Compensation to person aggrieved. Saving of his right to sue.

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[1] The words " of troops and military stores and equipages on their march or " were repealed by s. 8 of the Indian Tolls (Army) Act, 1901 (2 of 1901), Genl. Acts, Vol. V.

[2] In Upper Burma for the last sixteen words of this section the words "or of any person or property exempted by order of the Local Government from payment of tolls " have been substituted by the Burma Laws Act, 1898 (13 of 1898), s. 7, Bur. Code.

[3] For exemption of Military and Police officers in the Province of Agra, *see* U. P. List of Loc. R. & O. Vol. I, Pt. I, List 3, p. 1.

[4] The words " of the Zillah " were repealed by the Repealing Act, 1876 (12 of 1876).

Exhibition of table of tolls, and statement of penalties.

7. A table of the tolls authorized to be taken at any toll-gate or station shall be put up in a conspicuous place near such gate or station legibly written or printed in English words and figures, and also in those of the vernacular language of the district, to which shall be annexed, written or printed in like manner, a statement of the penalties for refusing to pay the tolls and for taking any unlawful toll.

Application of proceeds of tolls.

8. The tolls levied under this Act shall be deemed public revenue; but the net proceeds thereof shall be applied wholly to the construction, repair and maintenance of roads and bridges within the presidency[1] in which they are levied.

SCHEDULE[2].

On every four-wheeled carriage on springs,	2 rupees.
On every two-wheeled carriage on springs (except Native hackeries),	1 rupee.
On every Native hackery on springs,	2 annas.
On every four-wheeled carriage without springs,	6 annas.
On every two-wheeled carriage without springs,	4 annas.
On every cart and hackery not on springs, and having wheels of less diameter than three feet six inches and tyres less in breadth than three inches,	8 annas.
On every cart and hackery not on springs, and not having wheels of less diameter than three feet six inches and tyres less in breadth than three inches,	2 annas.
Buffaloes or bullocks per head,	6 pie.
On every elephant,	1 rupee.
On every camel,	4 annas.
On every horse,	1 anna.
On every tattu,	6 pie.
On every score of sheep or goats,	2 annas.
On every herd of swine, per hundred,	4 annas.
On every mule,	3 pie.
On every ass,	2 pie.
On every palanquin or tonjon with bearers	1 rupee.
On every palna or small Native palanquin with bearers,	4 annas.
On every Native duli with bearers,	2 annas.
On every person carrying a load for hire,	2 pie.

N.B.—Animals drawing any vehicle for which toll can be demanded are not to be also charged with toll.

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[1] The word "presidency" in s. 8 is to be deemed to mean and to have meant the territories under the administration of a Local Government. *See* the Indian Tolls Act, 1888 (8 of 1888), s. 2 (*2*), Genl. Acts, Vol. IV.

[2] The Schedule is not in force in places to which the Indian Tolls Act, 1864 (15 of 1864), has been extended, except as to proceedings pending at the time at which that Act is extended and except as to any rate of toll levied theretofore; *see* s. 1. For Act 15 of 1864, *see infra.*

ACT No. VIII OF 1852[1].

[*6th February, 1852.*]

An Act for remunerating the Sheriffs of Calcutta, Madras and Bombay for the execution of Mufassal Process under Act XXIII of 1840[2].

Preamble.

FOR making better provision for the Sheriffs of Calcutta, Madras and Bombay, in remuneration for the execution of legal process issued by Courts out of the said towns, respectively; It is enacted as follows:—

Sadr Courts to make and amend table of fees of Sheriffs for executing Mufassal process,

and of allowances for advertisements, etc.

By whom and when payable.

1. The several Sadr Courts of the presidency of Fort William in Bengal, and the Sadr Courts of the Madras and Bombay presidencies, respectively, shall make, and from time to time amend, a table of reasonable fees[3], to be taken on account of the execution by the Sheriff in such presidency of any legal process issued by any Court, Judge or Magistrate, beyond the jurisdiction of the several Supreme Courts established by Royal Charter in Calcutta, Madras and Bombay, and of the sums to be allowed for costs of advertisements or other notifications of sales of property, according to the amount of the decrees to be satisfied by such sales; which fees and sums shall be payable by the party applying for the process before it is sent to the Sheriff for execution, and shall be deemed costs in the cause.

Submission of table for approval.

When to have force.

2. The said table of fees and sums, when made or amended as aforesaid, shall be submitted by the Sadr Court of the Lower Provinces of the presidency of Fort William to the Governor of Bengal, and by the Sadr Court of the North-Western Provinces of the said presidency to the Lieutenant-Governor of those Provinces, and by the Sadr Courts of Madras and Bombay, respectively, to the Governor in Council of the presidencies in which such Courts respectively have jurisdiction, for his approval; and the said table of fees and sums shall have full force and

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[1] Short title, "The Sheriffs' Fees Act, 1852." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared, by notification under s. 3 of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India, 1880, Pt. I, p. 6.	
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum .	Ditto	1881, Pt. I, p. 504.

[2] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898), s. 3, Genl. Acts, Vol. V. *See* also the Code of Civil Procedure (Act V of 1908), s. 3, Genl. Acts, Vol. VI.

[3] For table of Sheriffs' fees for executing mufassal processes in the Punjab. *See* Punjab Loc. R. & O. Pt. II, p. 25.

effect, and the fees and sums therein mentioned may be lawfully demanded and taken, from and after the approval thereof by the said Governor, Lieutenant-Governor or Governor in Council, as the case may be.

Account of fees, etc.

Payment into treasury.

3. Every such Court, Judge and Magistrate, issuing process as aforesaid, shall cause a separate account to be kept of the amount of all fees and sums so paid, and shall from time to time, as directed by Government, cause the amount thereof to be paid into the local treasury.

Payment to Sheriff.

4. The Government of each of the presidencies and provinces aforesaid, shall twice in each year account for and pay over to the Sheriff for the time being the amount of fees and sums so paid, after deducting all necessary expenses of receiving and keeping account thereof, and remitting the net proceeds thereof to Calcutta, Madras or Bombay, as the case may be; or where the amount has accrued in the shrievalty of more than one Sheriff, shall apportion the sum paid accordingly between the Sheriff for the time being and the then late Sheriff.

Composition with Sheriff,

5. The said Governments, respectively, may compound with the Sheriff for a monthly payment to be made to him instead of such fees and sums, and during such composition may appropriate the said fees and sums to the purposes of Government.

Additional fee for effecting sales.

6. Over and above such fees and sums, or any such monthly payment received instead of such fees and sums, the Sheriff shall be entitled to a fee after the rate of two rupees eight annas for each hundred rupees of the value of any goods or property taken and sold by him in execution of any process issued by any Court, Judge or Magistrate beyond the local jurisdiction of the said Supreme Courts, which fee shall be taken to cover all expenses connected with the seizure and sale, except the expense of advertisements.

Fee for execution against person.

7. No fee, estimated upon the amount of the sum for which any person is taken in execution, shall be payable to the Sheriffs of Calcutta, Madras or Bombay, or any of their bailiffs, for taking the body of any person in execution on any process issued by any Court, Judge or Magistrate out of the local jurisdiction of the said Supreme Courts, respectively; but instead thereof such fees shall be payable to the Sheriff for taking the body of any person in execution of any such process as shall be settled, from time to time, by the Sadr Court as aforesaid.

Liability of Sheriff in case of escape of person taken in execution.

8. If any person taken in execution on any such process shall escape out of the legal custody of the Sheriff, the Sheriff shall not be liable to an action of debt for such escape, but shall be liable only to an action upon the case for damages in consequence of such escape sustained by the person or persons at whose suit the prisoner was taken.

ACT No. XXX OF 1852 [1].

An Act for the Naturalization of Aliens.

[*16th July, 1852.*]

Preamble.

WHEREAS it is expedient to provide for the naturalization of aliens resident in the territories under the [2] Government of the East India Company; It is enacted as follows:—

Any resident may petition for naturalization.

1. Any person whilst actually residing in any part of the territories under the government of the East India Company may present a

[1] Short title, " The Indian Naturalization Act, 1852 "—*see* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV. The Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

This Act is saved by s. 16 of the Naturalization Act, 1870 (33 & 34 Vict., c. 14), Coll. Stats., Ind., Vol. I.

It has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 4 (*1*), and Sch. I, Bur. Code, and in the Arakan Hill District by the Arakan Hill Districts Laws Regulation, 1874 (9 of 1874), s. 3, *ibid.*

The Act has also been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India,	1880, Pt. I, p. 672.
Aden	Ditto	1879, Pt. I, p. 434.
West Jalpáiguri . . .	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum and Pargana Dhálbhum and the Kolhán in the District of Singbhum .	Ditto	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzápur District . . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar . . .	Ditto	1879, Pt. I, p. 382.
The Provinces of Kumáon and Gárhwal and the Tarái Parganas (now known as the Kumáon Division) . . .	Ditto	1902, Pt. I, p. 828.
The Districts of Hazára, Pesháwar, Kohat, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N. W. Code*) .	Ditto	1886, Pt. I, p. 48.
The District of Lahaul . .	Ditto	1886, Pt. I, p. 301.
Coorg	Ditto	1881, Pt. I, p. 203.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushai Hills) .	Ditto	1897, Pt. I, p. 299.
The Scheduled Districts in Ganjam and Vizagapatam .	Ditto	1898, Pt. I, p. 870.

[2] For definition of " Government," *see* s. 12, *infra*, p. 95.

memorial to Government, praying that the privileges of naturalization may be conferred upon him.

Contents of petition.

2. Such memorial shall state to the best of the knowledge and belief of the memorialist, his age, place of birth, place of residence, profession, trade or occupation, the length of time during which he has resided within the said territories, that he is settled in the said territories, or is residing within the same with intent to settle therein, and any other particulars which the Government may require to be stated therein, and such memorial shall be in writing and signed by the memorialist, and accompanied by an affidavit sworn by him, verifying the truth of the statements contained therein.

Affidavit to accompany.

Power to require further evidence.

3. The memorial shall be considered by the Government to whom it shall be presented, who shall enquire into the circumstances of the case, and may require such evidence either by affidavit or otherwise as they may deem proper, [1] in addition to the beforementioned affidavit of the memorialist, to prove the truth of the statements contained in such memorial.

Issue of certificate granting rights.

4. The Government may, if they shall think fit, issue a certificate in writing reciting such of the contents of the memorial as they may consider to be true and material, and granting to the memorialist all the rights, privileges and capacities of naturalization under this Act,

Limitation.

except such rights, privileges or capacities, if any, as may be specially excepted in such certificate.

Filing copy and affidavit.

5. The certificate shall be delivered to the memorialist; and a copy or duplicate thereof, together with the memorial upon which the same shall be obtained, and any affidavit which may accompany such memorial or be produced in support thereof, shall be filed by the Secretary to the

List of persons naturalized.

Government or such other officer as the Government may direct; and such Secretary or officer shall keep an alphabetical list of all persons who may be naturalized by such Government.

Cancelment of certificate for false statement.

6. If any material statement contained in such memorial shall be false, the Government may, if they think fit, by an order in writing, declare the certificate issued upon such memorial to be null and void to

Ceasing of rights thereunder.

all intents and purposes, except such purposes, if any, as may be specially excepted in such order; and from and after such order all the rights, privileges, and capacities derived through such certificate shall cease to exist.

Fees.

7. Such fees shall be payable in respect of the proceedings hereby authorized as shall be fixed by the Government.[2]

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[1] For example of a rule under this section, *see* Bom. Loc. R. & O., Vol. I, p. 19.

[2] For order fixing such fees in—
(1) Assam, *see* Assam M., p. 1.
(2) Burma, *see* Bur. R. M., Vol. I, p. 7.
(3) Madras, *see* Mad. Loc. R. & O., Vol. I, Pt. II, p. 19.
(4) U. P. of Agra and Oudh, *see* U. P. Loc. R. & O., Vol. I, List 3, p. 3.

Rights, etc., derived from certificate.

8. Upon obtaining such certificate, and taking and subscribing the oath as hereinafter prescribed, the memorialist shall within the said territories under the government of the East India Company be deemed a natural-born subject of Her Majesty as if he had been born within the said territories,[1] and shall be entitled within the said territories to all the rights, privileges and capacities of a subject of Her Majesty born within the said territories, except such rights, privileges and capacities, if any, as may be specially excepted in such certificate.

9. [*Saving of jurisdiction of Indian Courts.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

Time for taking oath of allegiance.

10. Within sixty days from the day of the date of such certificate the memorialist named in such certificate shall take and subscribe the oath contained in the schedule annexed to this Act.

Administration of such oath.

11. Such oath, as well as any other oath or affidavit required by this Act, may be administered by any Magistrate or Justice of the Peace within the limits of his jurisdiction, or by any other person to be appointed for that purpose by Government, and the person who shall administer the oath mentioned in the schedule to this Act annexed shall grant to the memorialist a certificate in writing of his having taken and subscribed such oath, and of the date of his taking and subscribing the same, and shall forward to the Government the oath so taken and subscribed, together with a duplicate of such certificate, which oath and duplicate certificate shall be filed and kept with the memorial.

Certificate of subscription of oath.

Interpretation of "Government" and "Magistrate." Gender.

12. The word "Government" in this Act shall be deemed to mean the person or persons for the time being lawfully entitled to administer the executive government in that part of the said territories in which the memorialist shall reside at the time of presenting such memorial. The word "Magistrate" shall include any person lawfully exercising the powers of a Magistrate, and words denoting the masculine gender shall include the feminine.

Substitution of affirmation for oath or affidavit.

13. In every case in which the word "oath" or "affidavit" is used in this Act, an affirmation to the same effect as the oath or affidavit required shall be sufficient in cases where the person required to make such oath or affidavit shall be a person allowed by law to affirm in civil cases, and in every such case such affirmation shall be made before the person authorized to administer the oath, and the word "oath" or "affidavit" wherever used in this Act shall include such affirmation.

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[1] A person taking out a certificate under this Act obtains only such advantages as are afforded by "colonial naturalization" (Hall, *Foreign Jurisdiction of the British Crown*, pp. 30, 31). By the operation of the saving contained in the Naturalization Act, 1870 (33 & 34 Vict., c. 14), section 16, he acquires the status of a natural-born subject of His Majesty, only with reference to British India, though in practice the provisions of that section have not always been applied with absolute strictness in the case of colonial enactments (Hall, pp. 28, 29).

SCHEDULE.

OATH.

I, A. B., of (*here state the description of the party*), do swear (*or being one of the persons allowed by law to affirm in civil cases, do affirm*), that I will be faithful and bear true allegiance to the Sovereign of the United Kingdom of Great Britain and Ireland, and of these territories [1] * * * * *.

(Signed) A. B.

ACT No. II OF 1853 [2].

[*4th February, 1853.*]

An Act to remove doubts as to the liability of all subjects of Her Majesty to the same jurisdictions as Natives in respect of

[1] The words " as dependent thereon, and that I will be true and faithful to the East India Company " were repealed by the Repealing Act, 1876 (12 of 1876).

[2] Short title, "The Landholders' Public Charges and Duties Act, 1853." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

The Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has been declared in force in—

Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), Bur. Code; the Arakan Hill District, by the Arakan Hill District Laws Regulation, 1874 (9 of 1874), *ib.*

the Santhál Parganas, by the Santhál Parganas Settlement Regulation, 1886 (3 of 1886), s. 2, as amended by the Santhál Parganas Laws and Justice Regulation, 1899 (3 of 1899), Ben. Code, Vol. I.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India,	1880, Pt. I, p. 672.
West Jalpáiguri	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum .	Ditto	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzápur District . . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Peshawar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857,* and ibid, *1902, Pt. I, p. 575; but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N.-W. Code*) .	Ditto	1886, Pt. I, p. 48.

public and Police duties and public charges incident to the holders of land or their local Agents or Managers.

Preamble.

IV of 1837.

WHEREAS by virtue of [1] Act No. IV of 1837 it is lawful for any subject of Her Majesty to acquire and hold in perpetuity, or for any term of years, property in land, or in any emoluments issuing out of land, in any part of the territories under the government of the East India Company;

and whereas doubts have arisen whether all subjects of Her Majesty acquiring or holding property in land, or in any emoluments issuing out of land, or acting as local agents or managers of such property, are subject to the same jurisdictions as Natives for enforcing the discharge of public and police duties incident to the holding of such property, or for the enforcement of public charges and assessments upon or in respect thereof;

and whereas it is just and reasonable that all persons who may think fit to hold such property, or to be the local agents or managers thereof, should be liable to the public burthens and duties incident thereto, and in case of neglect or refusal to discharge the same, should be subject to the same jurisdictions as Natives;

It is therefore declared and enacted as follows:—

Non-exemption from public charges or duties of landholders, etc., by reason of place of birth or of descent.

1. No person whatever, being the owner, holder or farmer of any property in land, or in any emoluments issuing out of land, in any part of the said territories, whether in perpetuity or for a term, or being a local agent or manager of any such property, is, by reason of his place of birth, or by reason of his descent, exempt from any public charge or assessment, or from any duty connected with the police, or with the salt or opium revenue, or from any duty whatsoever of a public nature, to which he would otherwise be subject, as the owner or holder of such property, or as a local agent or manager thereof.

Amenability to laws, etc., for default in respect of such charges and duties.

2. For the non-payment of any such public charge or assessment, or for the breach of any such duty as aforesaid, or for any neglect or misconduct in the discharge thereof, every person, whatever may have been his place of birth, or his descent, shall be subject to the same laws,

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The District of Lahaul . .	*See* Gazette of India,	1886, Pt. I, p. 301.
The Scheduled Districts of the Central Provinces . . .	Ditto	1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam .	Ditto	1898, Pt. I, p. 870.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushái Hills) . .	Ditto	1897, Pt. I, p. 299.
The Porahat Estate in the Singbhum District . . .	Ditto	1897, Pt. I, p. 1059.

It has been extended, by notification under s. 5 of the last-mentioned Act to the Scheduled Districts of Kumáon and Garhwál. *See* Gazette of India, 1876, Pt. I, p. 606.

[1] *See supra*, p. 2.

regulations and procedure, and to the same jurisdictions, as if he were a Native of the said territories.

ACT No. XX OF 1853 [1].

[*8th December, 1853.*]

An Act to amend the Law relating to Pleaders in the Courts of the East India Company.

WHEREAS it is expedient to amend the law relating to Pleaders in the Courts of the East India Company; It is enacted as follows:—

1. [*Repeal of enactments.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

Pleader not bound to attend Court except at hearing of cause in which he is employed.

2. No pleader shall be bound to attend in any of the Courts of the East India Company, on any day fixed for the transaction of civil business, or to notify to the Court his inability to attend, unless he shall be employed in some cause or business which, according to the practice of the Court, may be heard or transacted therein on that day, anything in any law or regulation to the contrary notwithstanding.

Right of Supreme Court attorneys to plead in all Sadr Courts.

3. Every attorney on the roll of any of Her Majesty's Supreme Courts of Judicature in India shall be entitled as such to plead in any of the Sadr Courts of the East India Company, subject however to all the rules for the time being in force in the said Sadr Courts respectively, applicable to barristers pleading therein, whether relating to the language in which the Court is to be addressed or to any other matter.

Barristers and attorneys of Supreme Courts not required to produce certificate of character, etc., but may plead in all subordinate Courts.

4. That part of [2] section 4, Act No. I of 1846, which provides that no person shall be admitted a pleader in any of the Courts of the East India Company, unless he have obtained a certificate in such manner as shall be directed by the Sadr Courts that he is of good character and duly qualified for the office, shall not extend to barristers or attorneys of any of the said Supreme Courts; but every such barrister and attorney shall be entitled as such to plead in any of the Courts of the East India Company subordinate to the Sadr Courts, subject to all the rules in force in the said subordinate Courts respectively applicable to pleaders therein, so far as such rules relate to the language in which the I of 1846.

[1] Short title, "The Legal Practitioners Act, 1853." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

The Act has been declared to be in force in the Madras and Bombay Presidencies, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), ss. 4 and 5, Genl. Acts, Vol. II.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the Scheduled District of Sindh. *See* Gazette of India, 1880, Pt. 1, p. 672, and in the Scheduled Districts in Ganjam and Vizagapatam, *see ibid*, 1898, Pt. I, p. 870.

It has been repealed in places to which the Pleaders, Mukhtárs and Revenue Agents Act, 1865 (20 of 1865), is extended, *see* s. 3; and in places to which the Legal Practitioners Act, 1879 (18 of 1879), applies, by the Legal Practitioners Act, 1884 (9 of 1884), s. 9. Act 20 of 1865 was repealed by Act 18 of 1879, Genl. Acts, Vol. III.

It has been repealed, so far as it applies to Burma, by s. 18 (*1*) of the Burma Laws Act, 1898 (13 of 1898), Bur. Code.

[2] *Supra.*

Court is to be addressed or to any other matter connected with pleading therein.

ACT No. XXXI OF 1854 [1].

[*16th December, 1854.*]

An Act [2]* * * * to simplify the modes of conveying land in cases to which the English Law is applicable.

WHEREAS it is expedient, in cases to which the English law applies, Preamble.

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[1] Short title, "The Conveyance of Land Act, 1854." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

The Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India,	1880, Pt. I, p. 672.
West Jalpáiguri . . .	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum .	Ditto	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzápur District . . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar . . .	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N. W. Code*) .	Ditto	1886, Pt. I, p. 43.
The Scheduled Districts of the Central Provinces . . .	Ditto	1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam .	Ditto	1898, Pt. I, p. 870.
The District of Sylhet . . .	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushái Hills) . .	Ditto	1897, Pt. I, p. 631.

It has been declared, by notification under s. 3 (*b*) of the last-mentioned Act not to be in force in the Scheduled District of Lahaul. *See* Gazette of India, 1886, Pt. I, p. 301.

[2] The words "to abolish real actions and also fines and common recoveries and" were repealed by the Repealing Act, 1874 (16 of 1874).

[1] * * * * to simplify the modes of conveying land, and to exempt the purchasers of trust-property from the liability to see to the application of the purchase money; It is enacted as follows:—

1. [*Real actions, fines and recoveries abolished.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

Tenant in tail may dispose of or enlarge his estate by simple deed, etc.

2. Every tenant in tail or other owner of an estate of inheritance less than an estate in fee-simple, either at law or in equity, in any lands or hereditaments, not being under any disability, shall have power to dispose of such lands and hereditaments against the issue in tail, and all persons whose estates are to take effect after the determination or in defeazance of his own, or to enlarge his said estate into an estate in fee-simple, by any deed declaring an intention so to dispose of the said lands or hereditaments, or to enlarge his estate therein; and every tenant in tail or other owner of an estate of inheritance less than an estate in fee-simple, who shall be under the disability of coverture, shall have power to dispose of or enlarge her said estate in manner aforesaid, by any deed declaring her intention so to do, and acknowledged by her as hereinafter mentioned:

Provided that every disposition under this section shall be subject to the rights of all persons in respect of estates prior to the estate tail or other estate of inheritance which is the subject of such disposition, and the rights of all other persons, except those against whom such disposition is by this Act authorized to be made.

Married woman, with husband's concurrence, may dispose of her estate by deed acknowledged.

3. Every married woman who, either alone, or jointly with her husband is possessed of or entitled to any estate or interest in or any power to be exercised over, any lands or hereditaments, which, but for the passing of this Act, she might have disposed of or extinguished by levying a fine, or suffering a recovery, or by joining in either of such assurances, shall have power by deed, to be acknowledged by her as hereinafter mentioned, to dispose of, release, surrender or extinguish any such estate, interest or power, as fully and effectually as if she were an unmarried woman. [2]

Secs. 2 and 3 to apply to money subject to be invested in land.

4. The provisions of the last two preceding sections shall, so far as circumstances will admit, apply to money subject to be invested in lands or other hereditaments.

Execution of deeds by married women.

5. No deed to be executed by a married woman under the provisions hereinbefore contained shall, so far as regards the interest of such married woman, be valid or effectual unless her husband concur therein, nor unless the deed be acknowledged in manner hereinafter prescribed before a Judge of one of Her Majesty's Supreme Courts, or before a Judge or other covenanted officer of the East India Company exercising

[1] *See* second footnote on previous page.
[2] *Cf.* the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 77.

civil jurisdiction in the place wherein such deed shall be acknowledged, or before some Commissioner appointed either especially for the occasion, or appointed as a permanent Commissioner by one of Her Majesty's said Courts to take such acknowledgments. [1]

If husband be lunatic, etc., Court may direct acknowledgment by deed without his concurrence, saving right of the husband, etc.

6. If the husband of any married woman, desirous of enlarging, passing or destroying any estate, interest or power, by a deed to be acknowledged by her under this Act, shall be a lunatic, idiot or of unsound mind, whether he shall have been found such by inquisition or not, or from any other cause shall be incapable of executing a deed, or if his residence shall not be known, or if he shall be in prison, or living apart from his wife either by mutual consent or by sentence of divorce, or in consequence of his being transported beyond the seas, or from any other cause whatever, it shall be lawful for any of Her Majesty's said Courts, by an order to be made in a summary way upon the application of such married woman, and upon such evidence as to the Court shall seem meet, to dispense with the concurrence of her husband in the deed so to be acknowledged; and any deed to be executed or acknowledged by her in pursuance of such order shall (but without prejudice to the rights of her husband as then existing, independently of this Act), be as valid and effectual as if he had concurred therein [2].

Supreme Courts may appoint commissioners to take such acknowledgments.

7. It shall be lawful for any of Her Majesty's said Courts to appoint[3] by its order, under the seal of the Court, to be published in the Government Gazette or otherwise as the Court shall direct, permanent commissioners, either by name or office, and to appoint from time to time, under special commissions, special commissioners, any one of whom shall be authorized and empowered unless the act is directed to be done before more than one to take the acknowledgment of any deed by any married woman, who, by reason of her place of residence, or ill-health, or other sufficient cause, shall be unable to make such acknowledgment before one of the Judges or other officers described in the preceding section.

Examination of married woman apart from her husband.

8. Every such Judge, officer or commissioner as aforesaid, before he shall receive the acknowledgment by any married woman of any deed to be acknowledged by her under this Act, shall examine her apart from her husband touching her knowledge of such deed, and shall ascertain whether she understands its object, and freely and voluntarily consents to the same, and unless she appears to understand its object, and freely and voluntarily to consent to such deed, he shall not permit her to

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[1] *Cf.* the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 79.

[2] *Cf.* the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 91.

[3] For order appointing the Sub-Judge of the Nilgiris to be a permanent Commissioner for the purpose of taking the acknowledgment of deeds by married women resident in the Nilgiri District, *see* Mad. List of Loc. R. & O., Vol. I.

acknowledge the same, and in such case such deed, so far as relates to the execution thereof by such married woman, shall be void [1].

Judge, etc., to sign memorandum of acknowledgment.

9. Every Judge, officer or commissioner taking such acknowledgment under this Act shall, at the time of taking the same, sign a memorandum to be endorsed on or written at the foot, or in the margin of such deed, which memorandum shall be to the following effect, namely, "this deed, marked ( ), was this day produced before me and acknowledged by therein named to be her act and deed, previous to which acknowledgment the said was examined by me separately and apart from her husband, touching her knowledge of the contents of the said deed, and her consent thereto and appeared to understand the same and declared the same to be freely and voluntarily executed by her." [2]

Deed of married women when to take effect.

10. Every deed executed by a married woman and hereby required to be acknowledged shall, so far as regards the interest of such married woman, take effect only from the time of the acknowledgment thereof.

Deed when presumed to have been duly acknowledged.

11. It shall not be necessary for any person producing a deed so acknowledged in any Court of Justice to prove the handwriting or authority of the Judge or other officer, or the commissioner taking such acknowledgment, but if such memorandum purports to have been in substance regularly made and signed, the deed shall be presumed to have been duly acknowledged by the party until the contrary is shown.

Saving of married women's powers of alienation.

12. Nothing in this Act contained shall abridge, extend or affect the powers of alienation or disposition which any married women might have exercised over any property or rights, otherwise than by levying a fine or suffering a recovery, or by joining in one of such assurances before the passing of this Act.

Contingent estates without trustees to preserve, to be protected.

13. In any deed or will executed after this Act comes into operation, and disposing of immoveable property situate in the territories [3] * * * under the Government of [4] * * India, [4] * wherein contingent estates are limited without the appointment of any trustees to preserve such contingent estates the same shall be, to all intents and purposes, as effectually protected by the law as if such trustees had been duly appointed.

Estates may be conveyed, etc., by simple deed.

14. Any estate or interest in immoveable property, situate within the said territories, whether in possession, remainder or reversion, may,

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[1] *Cf.* the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 80.

[2] *Cf.* the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 84.

[3] The words "in the possession and" were repealed by the Repealing Act, 1876 (12 of 1876).

[4] The words "the East" and the word "Company" were repealed by the Repealing Act, 1874 (15 of 1874).

in addition to any other mode of conveyance or release which is now valid, be conveyed, passed or released by a simple deed, whether such deed operate under the [1] Statute of Uses or not.

No conveyance to operate tortiously.

15. No conveyance of any kind shall operate to destroy, impair or affect any estate or interest which the conveying party has no right to destroy, impair or affect or beyond the extent to which he may impair or affect the same.

Words of limitation not necessary in a deed to give estate by inheritance.

16. It shall not be necessary in any deed relating to immoveable property situate within the said territories, to be executed after the passing of this Act, to add words of limitation to heirs, when the intention is to give the absolute interest to a person and his heirs general; but a gift, grant or other conveyance of immoveable property to, or in favour of, any person shall be taken to give him the entire and absolute interest in the nature of an estate in fee-simple, unless such construction is rendered inadmissible by the other contents of the deed; and when in any deed or will executed after the passing of this Act any property is given to a person for life or for other freehold interest, and afterwards in the same deed, or will, is limited to his heirs or heir special the estates shall not unite, but the limitation to the heirs shall be a limitation of an estate to be taken by the heirs by purchase.

Estate limited to heirs shall not unite with prior life-estate.

Bonâ fide purchaser not required to see to application of trust money.

17. [2] When any property is sold, the proceeds of which are subject to any trust, the *bonâ fide* purchaser of the property shall not in any case be bound to see to the application of the purchase-money to the purposes of the trust.

Act to apply only to cases governed by English law.

18. Nothing in this Act contained shall extend to any case to which the English law is not applicable.

19. [*Interpretation-clause.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

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[1] *See* the Real Property Act, 1845 (8 & 9 Vict., c. 106), ss. 2 and 4, respectively.

[2] Repealed in places to which the Transfer of Property Act, 1882 (4 of 1882), extends or is extended by Act IV of 1882, s. 2, Genl. Acts, Vol. III.

ACT No. XI OF 1855[1].

[*27th March, 1855.*]

An Act relating to *mesne profits and* to improvements made by holders under defective titles in cases to which the English Law is applicable.

Preamble. WHEREAS it is expedient, in cases to which the English law is applicable, *to limit the liability for mesne profits and* to secure to *bonâ fide* holders under defective titles the value of improvements made by them; It is enacted as follows:—

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[1] Short title, "The Mesne Profits and Improvements Act, 1855." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

See note below.

The Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India,	1880, Pt. I, p. 672.
West Jalpáiguri . . .	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohardaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum .	Ditto	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzápur District . . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application to that portion of the Hazára District known as Upper Tanawal has been barred by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punjab and N. W. Code*) .	Ditto	1886, Pt. I, p. 48.
The Scheduled Districts of the Central Provinces . . .	Ditto	1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam .	Ditto	1898, Pt. I, p. 870.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushái Hills) . .	Ditto	1897, Pt. I, p. 299.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the Scheduled Districts of Kumáon and Garhwál. *See* Gazette of India, 1876, Pt. I, p. 606.

It has been declared, by notification under s. 3 (*b*) of the same Act, not to be in force in the Scheduled District of Lahaul. *See* Gazette of India, 1886, Pt. I, p. 301.

No person chargeable with rent *bonâ fide* paid to holder under defective title.

1. [1] No person shall be chargeable with any rents or profits of any immoveable property which he has *bonâ fide* paid over to any person of whom he *bonâ fide* held the same, notwithstanding it may afterwards appear that the person to whom such payment was made had no right to receive such rents or profits.

Value of improvements made by *bonâ fide* holders under defective titles secured to them.

2. If any person shall erect any building or make an improvement upon any lands held by him *bonâ fide* in the belief that he had an estate in fee-simple, or other absolute estate, and such person, his heirs or assigns, or his or their under-tenants, be evicted from such lands by any person having a better title, the person who erected the building or made the improvement, his heirs or assigns, shall be entitled either to have the value of the building or improvement so erected or made during such holding and in such belief, estimated and paid or secured to him or them, or, at the option of the person causing the eviction, to purchase the interest of such person in the lands at the value thereof, irrespective of the value of such building or improvement:

Amount how fixed.

Provided that the amount to be paid or secured in respect of such building or improvement shall be the estimated value of the same at the time of such eviction.

Act to apply only to cases governed by English Law.

3. Nothing in this Act contained shall extend to any case to which the English law is not applicable.

[1] The words in italics in the title and in the preamble, together with s. 1, are repealed in places to which the Transfer of Property Act, 1882, extends or is extended. *See* the Transfer of Property Act, 1882 (4 of 1882), s. 2, Genl. Acts, Vol. III.

ACT No. XII OF 1855 [1].

[*27th March, 1855.*]

An Act to enable Executors, Administrators or Representatives to sue and be sued for certain wrongs [2].

Preamble. WHEREAS it is expedient to enable executors, administrators or repre-

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[1] Short title, "The Legal Representatives' Suits Act, 1850." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has also been declared in force in Angul District by the Angul District Regulation (1 of 1894), s. 3, Ben. Code, Vol. I; in the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), Bengal Code, Vol. I, and in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 4, Bur. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India,	1880, Pt. I, p. 672.
West Jalpáiguri . . .	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohardaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum .	Ditto	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzápur District . . .	Ditto	1879, Pt. I, p. 283.
Jaunsar Báwar . . .	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Peshawar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application to that part of the Hazára District known as Upper Tanawal has been barred by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punjab and N.-W. Code*) . . .	Ditto	1886, Pt. I, p. 48.
The District of Lahaul . .	Ditto	1886, Pt. I, p. 301.
The Scheduled Districts of the Central Provinces . . .	Ditto	1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam .	Ditto	1898, Pt. I, p. 870.
The District of Sylhet . ,	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushái Hills) . .	Ditto	1897, Pt. I, p. 299.
The Porahat Estate in the Singbhum District . . .	Ditto	1897, Pt. I, p. 1059.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

Kumáon and Garhwál . .	*See* Gazette of India,	1876, Pt. I, p. 606.
The Tarái of the Province of Agra	Ditto	1876, Pt. I, p. 505.

[2] *See* the Civil Procedure Act, 1833 (3 & 4 Will. 4, c. 42), s. 2.

sentatives in certain cases to sue and be sued in respect of certain wrongs which, according to the present law, do not survive to or against such executors, administrators or representatives; It is enacted as follows:—

Executors may sue and be sued in certain cases for wrongs committed in lifetime of deceased.

1. An action may be maintained by the executors, administrators or representatives of any person deceased for any wrong committed in the lifetime of such person, which has occasioned pecuniary loss to his estate, for which wrong an action might have been maintained by such person, so as such wrong shall have been committed within one year before his death [1] * * * ; and the damages, when recovered, shall be part of the personal estate of such person:

and further, an action may be maintained against the executors or administrators or heirs or representatives of any person deceased for any wrong committed by him in his lifetime for which he would have been subject to an action, so as such wrong shall have been committed within one year before such person's death [2] * * * : and the damages to be recovered in such action shall, if recovered against an executor or administrator bound to administer according to the English law, be payable in like order of administration as the simple contract debts of such person.

Death of either party not to abate suit. Proviso.

2. No action commenced under the provisions of this Act shall abate by reason of the death of either party, but the same may be continued by or against the executors, administrators or representatives of the party deceased; Provided that, in any case in which any such action shall be continued against the executors, administrators or representatives of a deceased party, such executors, administrators or representatives may set up a want of assets as a defence to the action, either wholly or in part, in the same manner as if the action had been originally commenced against them.

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[1] The words "and provided such action shall be brought within one year after the death of such person" were repealed by the Indian Limitation Act, 1871 (9 of 1871), Sch. I.

For limitation, *see* now the Indian Limitation Act, 1908 (9 of 1908), Genl. Acts, Vol. VI.

[2] The words "and so as such action shall be commenced within two years after the committing of the wrong" were repealed by the Indian Limitation Act, 1871 (9 of 1871), s. 2. For limitation, *see* now the Indian Limitation Act, 1908 (9 of 1908), Genl. Acts, Vol. VI.

ACT No. XIII OF 1855 [1].

[*27th March, 1855.*]

An Act to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong.

Preamble.

WHEREAS no action or suit is now maintainable in any Court against a person who, by his wrongful act, neglect or default, may have caused the death of another person, and it is often-times right and expedient

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[1]Short title, "The Indian Fatal Accidents Act, 1855." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

Based on the Fatal Accidents Act, 1846 (9 & 10 Vict., c. 93).

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s. 4 (*1*) and Sch. I, Bur. Code; in the Santhál Parganas by t e Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, Ben. Code, Vol. I; in the Arakan Hill District, by the Arakan Hill District Laws Regulation, 1874 (9 of 1874), s. 3, Bur. Code; and in Angul District by the Angul District Regulation, 1894 (1 of 1894), s. 3, Ben. Code, Vol. I.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India,	1880, Pt. I, p. 672.
West Jalpáiguri . . .	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohardaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum .	Ditto	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzápur District . . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar . . .	Ditto	1879, Pt. I, p. 382.
The Scheduled Districts of the Punjab (some of these and portions of others now form the North-West Frontier Province, P. & N.-W. Code, Appx.)	Ditto	1881, Pt. I, p. 483.
The Scheduled Districts of the Central Provinces . .	Ditto	1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam .	Ditto	1898, Pt. I, p. 870.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushái Hills) . . .	Ditto	1897, Pt. I, p. 299.
The Porahat Estate in the Singbhum District . . .	Ditto	1897, Pt. I, p. 1059.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

Kumáon and Garhwál . .	*See* Gazette of India,	1876, Pt. I, p. 606.
The Tarái of the Province of Agra	Ditto	1876, Pt. I, p. 505.

that the wrong-doer in such case should be answerable in damages for the injury so caused by him; It is enacted as follows:—

Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong.

1. Whenever the death of a person shall be caused by wrongful act, neglected or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

And it is enacted further that every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased;

and in every such action the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the beforementioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct.

Not more than one suit to be brought.

2. Provided always that not more than one action or suit shall be brought for, and in respect of the same subject-matter of complaint [1] * * * * * * : Provided that, in any such action or suit, the executor, administrator or representative of the deceased may insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default, which sum when recovered, shall be deemed part of the assets of the estate of the deceased.

Claim for loss to estate may be added.

Plaintiff shall deliver particulars, etc.

3. The plaint in any such action or suit shall give a full particular of the person or persons for whom, or on whose behalf, such action or suit shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

Interpretation-clause.

4. The following words and expressions are intended to have the meaning hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject-matter; that is to say, words denoting the singular number are to be understood to apply also to a plurality of persons or things, and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender; and the word "person" shall apply to bodies politic

[1] The words " and that every such action shall be brought within twelve calendar months after the death of such deceased person " were repealed by the Indian Limitation Act, 1871 (9 of 1871). For limitation, *see* now the Indian Limitation Act, 1908 (9 of 1908), Genl. Acts, Vol. VI.

and corporate; and the word "parent" shall include father and mother [1] and grand-father and grand-mother; and the word "child" shall include son and daughter and grand-son and grand-daughter and step-son and step-daughter.

ACT No. XXIII OF 1855 [2].

[*13th August, 1855.*]

An Act to amend the Law relating to the administration of the Estates of deceased persons charged with money by way of Mortgage.

Preamble. WHEREAS it is expedient that the law, under which the real and per-

[1] Step-father and step-mother are designedly omitted.

[2] Short title, "The Mortgaged Estates Administration Act, 1855." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

Based on the Real Estate Charges Act, 1854 (17 & 18 Vict., c. 113). Repealed, except as to descents or devises occurring or made before 1st January, 1866, by the Repealing Act, 1868 (8 of 1868).

This Act has been declared, as regards such descents and devises, to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

West Jalpáiguri	*See* Gazette of India, 1881, Pt. I, p. 74.	
The Districts of Hazáribágh, Lohardaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum .	Ditto	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzápur District . . .	Ditto	1879, Pt. I, p. 383.
Jaunsar-Báwar	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Peshawar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application to that part of the Hazára District known as Upper Tanawal has been barred by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punjab and N.-W. Code*) . . .	Ditto	1886, Pt. I, p. 48.
The Scheduled Districts in Ganjam and Vizagapatam .	Ditto	1898, Pt. I, p. 870.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushái Hills) . .	Ditto	1897, Pt. I, p. 299.

It has been declared, by notification under s. 3 (*b*) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul. *See* Gazette of India, 1886, Pt. I, p. 301.

As to devises made on or after 1st January, 1886, *see* the Indian Succession Act, 1865 (10 of 1865), s. 154, *infra*.

sonal assets of deceased persons subject to the English law are administered, should be amended; It is enacted as follows:—

Heir or devisee of land not to claim payment of mortgage out of personality

1.[1] * * * * * If any person shall die seised of, or entitled to, any estate or interest in any land or other hereditaments within the territories in the possession of, and under the Government of, the East India Company, which shall, at the time of his death, be charged with the payment of any sum or sums of money by way of mortgage, and such person shall not by his will or deed or other document have signified any contrary or other intention, the heir or devisee to whom such land or hereditaments shall descend or be devised shall not be entitled to have the mortgage-debt discharged or satisfied out of the personal estate or any other real estate of such person, but the land or hereditaments so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage-debts with which the same shall be charged, every part thereof, according to its value bearing a proportionate part of the mortgage-debts charged on the whole thereof:

Proviso as to right of mortgagee to satisfaction, from personal assets.

Provided always that nothing herein contained shall affect or diminish any right of the mortgagee of such lands or hereditaments to obtain full payment or satisfaction of his mortgage-debt, either out of the personal estate of the person so dying as aforesaid or otherwise:

Proviso as to claims made prior to this Act.

Provided also that nothing herein contained shall affect the rights of any person claiming under, or by virtue of any will, deed or document already made, or to be made, before this Act shall have come into operation.

ACT No. XXIV OF 1855[2].

[*13th August, 1855.*]

An Act to substitute penal servitude for the punishment of Transportation in respect of European and American Convicts * * * * *.

Preamble.

WHEREAS, by reason of the difficulty of providing a place to which

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[1] The words "After this Act shall have come into operation" were repealed by the Repealing Act, 1874 (16 of 1874).

[2] Short title, "The Penal Servitude Act, 1855." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has been declared in force in—

British Baluchistan, by the British Baluchistan Laws Regulation, 1890 (1 of 1890), s. 3, Bal. Code;

the Santhál Parganas, by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), Ben. Code, Vol. I;

Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s. 6, Bur. Code.

Europeans or Americans can, with safety to their health, be sent for the purpose of undergoing sentences of transportation or of imprisonment for long terms it has become expedient to substitute other punishments for that of transportation [1] * * * ; It is enacted as follows:—

No European or American to be sentenced to transportation.

1.[2] * * * * No European or American shall be liable to be sentenced, or ordered, by any Court within the territories[2] * * under the Government of [2] * * India [2] * , to be transported.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely:—

Sindh	*See* Gazette of India,	1880, Pt. I, p. 672.
Aden	Ditto	1879, Pt. I, p. 434.
West Jalpáiguri and the Western Duárs	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohardaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum .	Ditto	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzápur District . . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán, Dera Gházi Khán and the Districts of Peshawar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application to that part of the Hazára District known as Upper Tanawal has been barred by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punjab and N.-W. Code*) . . .	Ditto	1886, Pt. I, p. 48.
The Scheduled Districts of the Central Provinces . .	Ditto	1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam .	Ditto	1898, Pt. I, p. 870.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushái Hills) . .	Ditto	1897, Pt. I, p. 299.
The Porahat Estate in the Singbhum District . . .	Ditto	1897, Pt. I, p. 1059.

It has been declared, by notification under s. 3 (*b*) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul. *See* Gazette of India, 1886, Pt. I, p. 301.

[1] The words "and to amend the law relating to the removal of such convicts" in the title and the words "and to amend the law relating to the removal of European and American convicts for the purpose of imprisonment," in the Preamble were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[2] The words "After the commencement of this Act" the words "the East" and Company" and the words "in the possession and," in section 1, were repealed respectively by the Repealing Act, 1874 (16 of 1874), and by the Repealing Act, 1876 (12 of 1876).

Terms of penal servitude instead of the present terms of transportation.

2. Any person who, but for the passing of this Act, would, by any law now in force, or which may hereafter be in force, in any part of the said territories, be liable to be sentenced or ordered, by any such Court, to be transported, shall, if a European or American, be liable to be sentenced or ordered to be kept in penal servitude for such term as hereinafter mentioned.

The terms of penal servitude to be awarded by any sentence or order instead of the term of transportation to which any such offender would, but for the passing of this Act, be liable, shall be as follows: (that is to say)—

Instead of transportation for seven years, or for a term not exceeding seven years, penal servitude for the term of four years.

Instead of any term of transportation exceeding seven years and not exceeding ten years, penal servitude for any term not less than four and not exceeding six years.

Instead of any term of transportation exceeding ten years and not exceeding fifteen years, penal servitude for any term not less than six and not exceeding eight years.

Instead of any term of transportation exceeding fifteen years, penal servitude for any term not less than six and not exceeding ten years.

Instead of transportation for the term of life, penal servitude for the term of life.

And in every case where, at the discretion of the Court, one of any two or more of the terms of transportation hereinbefore mentioned might have been awarded, the Court shall have the like discretion to award one of the two or more terms of penal servitude hereinbefore mentioned, in relation to such terms of transportation.

Discretion of Courts as to alternative punishments.

3. Provided always that nothing herein contained shall interfere with or affect the authority or discretion of any Court in respect of any punishment which such Court may now award or pass on any offender other than transportation; but, where such other punishment may be awarded at the discretion of the Court instead of transportation or in addition thereto, the same may be awarded instead of, or (as the case may be) in addition to, the punishment substituted for transportation by this Act.

Effect of pardon granted upon condition of penal servitude.

4. If any offender sentenced by any Court within the said territories to the punishment of death shall have mercy extended to him, upon condition of his being kept in penal servitude for life, or for any term of years, all the provisions of this Act shall be applicable to such offender in the same manner as if he had been lawfully sentenced under this Act to the term of penal servitude specified in the condition.

5. [*Power to substitute penal servitude for transportation.*] *Rep. by the Prisoners Act, 1871 (V of 1871).*

6. [*Mode of dealing with person under sentence of penal servitude.*] *Rep. by the Prisoners Act, 1871 (V of 1871).*

7. [*Application of enactments respecting transportation and imprisonment with hard labour.*] *Rep. by the Prisoners Act, 1871 (V of 1871).*

8. [*Removal of convicts under sentence of imprisonment from one prison to another.*] *Rep. by the Presidency Jails Act, 1867 (XII of 1867).*

9, 10, 11 & 12. [*Licenses to convicts under sentence of penal servitude to be at large.*] *Rep. by the Prisoners Act, 1871 (V of 1871).*

Act not to affect the provisions of certain English Statutes.

13. Nothing in this Act is intended to alter or affect the provisions of the 12 & 13 Victoria, Chapter 43 [1], or any Act of Parliament passed in the United Kingdom of Great Britain and Ireland since the 28th of August, 1833, or which may hereafter be passed. 12 & 13 Vict, c. 43.

Sentence when proof that a person is a European or an American.

14. Any sentence or order upon any person describing him as a European or American shall be deemed, for the purposes of this Act, to be conclusive of the fact that such person is a European or American within the meaning of this Act.

Interpretation-clause.

15. The word "European," as used in this Act, shall be understood to include any person usually designated a [2] European British subject. Words in the singular number or the masculine gender shall be understood to include several persons as well as one person, and females as well as males, unless there be something in the context repugnant to such construction.

16. [*Commencement of Act.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

ACT No. XXVIII OF 1855 [3].

[*19th September, 1855.*]

An Act for the repeal of the Usury Laws.

Preamble.

WHEREAS it is expedient to repeal the laws now in force relating to usury; It is enacted as follows:—

1. [*Repeal of enactments.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

Rate of

2. In any suit in which interest is recoverable, the amount shall be

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[1] "An Act for punishing mutiny and desertion of officers and soldiers in the service of the East India Company, and for regulating in such service the payment of regimental debts and the distribution of effects of officers and soldiers dying in the service." Rep. by 20 & 21 Vict. c. 66 (Mutiny, East India).

[2] *See* definition of European British subject in s. 4, cls. (*h*) and (*i*), of the Code of Criminal Procedure, 1898 (Act V of 1898), Genl. Acts, Vol. V.

[3] Short title, "The Usury Laws Repeal Act, 1855." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

adjudged or decreed by the Court at the rate (if any) agreed upon by the parties; and, if no rate shall have been agreed upon, at such rate as the Court shall deem reasonable. interest to be decreed by Courts.

3. Whenever a Court shall direct that a judgment or decree shall bear interest, or shall award interest upon a judgment or decree, it may order the interest to be calculated at the rate allowed in the judgment or decree upon the principal sum adjudged, or at such other rate as the Court shall think fit. Rate of interest upon a judgment or decree.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India,	1880, Pt. I, p. 672.
West Jalpáiguri, the Western Dvárs, the Western Hills of Dárjiling, the Dárjiling Tarái and the Damson Sub-division of the Dárjiling District .	Ditto	1881, Pt. I, p. 74.
The District of Hazáribágh .	Ditto	1881, Pt. I, p. 507.
The District of Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44)	Ditto	1881, Pt. I, p. 508.
The District of Mánbhum .	Ditto	1881, Pt. I, p. 509.
Pargana Dhálbhum in the District of Singbhum . . .	Ditto	1881, Pt. I, p. 510.
The Scheduled portion of the Mirzápur District . . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Peshawar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application to that part of the Hazára District known as Upper Tanawal has been barred by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punjab and N.-W. Code*) . . .	Ditto	1886, Pt. I, p. 48.
The District of Lahaul . .	Ditto	1886, Pt. I, p. 301.
The Scheduled Districts of the Central Provinces . . .	Ditto	1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam .	Ditto	1898, Pt. I, p. 870.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The Districts of Kámrup, Naugong, Darrang, Síbságar, Lakhimpur, Goálpára (excluding the Eastern Dvárs) and Cachar (excluding the North Cachar Hills) . .	Ditto	1878, Pt. I, p. 533.

It has been extended, under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

Kumáon and Garhwál . .	*See* Gazette of India,	1876, Pt. I, p. 606.
The Tarái of the Province of Agra	Ditto	1876, Pt. I, p. 505.

Contracts for usufruct of property in lieu of interest.

4. A mortgage or other contract for the loan of money, by which it is agreed that the use or usufruct of any property shall be allowed in lieu of interest, shall be binding upon the parties.

Amount of interest to be deposited in certain cases of conditional sales under Bengal Regulations.

Proviso.

5. Whenever, under the [1] Regulations of the Bengal Code, a deposit may be made of the principal sum and interest due upon any mortgage or conditional sale of land hereafter to be entered into, the amount of interest to be deposited shall be at the rate stipulated in the contract, or, if no rate has been stipulated and interest be payable under the terms of the contract, at the rate of twelve percentum per annum: Provided that, in the latter case, the amount deposited shall be subject to the decision of the Court as to the rate at which interest shall be calculated.

Rate of interest on future adjustments of accounts.

6. In any case in which an adjustment of accounts may become necessary between the lender and the borrower of money upon any mortgage, conditional sale of landed property, or other contract whatsoever, which may be entered into after the passing of this Act, interest shall be calcu'ated at the rate stipulated therein; or, if no rate of interest shall have been stipulated and interest be payable under the terms of the contract, at such rate as the Court shall deem reasonable.

7. [*Saving of prior transactions.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

8. [*Commencement of Act.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

SCHEDULE OF REPEALED ENACTMENTS.

[*Rep. by the Repealing Act, 1870 (XIV of 1870).*]

ACT No. IX OF 1856 [2].

[*11th April, 1856.*]

An Act to amend the Law relating to Bills of Lading.

Preamble.

WHEREAS by the custom of merchants a bill of lading of goods being transferable by endorsement, the property in the goods may thereby pass to the endorsee, but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner,

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[1] *See* Bengal Reg. 1 of 1793, s. 2. This Regulation is, however, now in force only in the Santhál Parganas and possibly in the Chota Nagpur Division; and, with the exception of the parts which relate to interest, the Regulation is also in force in the Punjab. *See* the P. & N. W. Code.

[2] Short title, "The Indian Bills of Lading Act, 1856." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

Act 9 of 1856 is based on the Bills of Lading Act, 1855 (18 & 19 Vict., c. 111).

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

and it is expedient that such rights should pass with the property; And whereas it frequently happens that the goods in respect of which bills of lading purport to be signed have not been laden on board, and it is proper that such bills of lading in the hands of a *bonâ fide* holder for value should not be questioned by the master or other person signing the same, on the ground of the goods not having been laden as aforesaid; It is enacted as follows:—

Rights under bills of lading to vest in consignee or endorsee.

1. Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

Not to affect right of stoppage *in transitu* or claims for freight.

2. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu* [1], or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

Bill of lading in hands of consignee, etc., conclusive evidence of the shipment as against master, etc.

3. Every bill of lading in the hands of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not in fact been laden on board:

Proviso.

Provided that the master or other person so signing may exonerate himself, in respect of such misrepresentation, by showing that it was caused without any default on his part, and wholly by the fraud of the shipper or of the holder, or some person under whom the holder claims.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely:—

Sindh	*See* Gazette of India, 1880, Pt. I, p. 672.	
West Jalpáiguri . . .	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohardaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum .	Ditto	1881, Pt. I, p. 504.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushái Hills) . .	Ditto	1897, Pt. I, p. 299.

[1] As to stoppage in transit, *see* the Indian Contract Act, 1872 (9 of 1872), ss. 99-106, Genl. Acts, Vol. II.

ACT No. XI OF 1856[1].

[*11th April, 1856.*]

An Act for the better prevention of desertion by European Soldiers from the Land Forces of Her Majesty [2] * * * in India.

Preamble. WHEREAS it is expedient to make better provision for apprehending and detaining European deserters from the Land Forces in the service

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[1] Short title, "The European Deserters Act, 1856." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared to be in force in—

the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II;

the Santhál Parganas, by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), Ben. Code, Vol. I.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India,	1880, Pt. I, p. 672.
Aden	Ditto	1879, Pt. I, p. 434.
West Jalpáiguri	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum	Ditto	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzápur District	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Peshawar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application to that part of the Hazára District known as Upper Tanawal has been barred by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punjab and N.-W. Code*)	Ditto	1886, Pt. I, p. 48.
The Scheduled Districts of the Central Provinces	Ditto,	1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam	Ditto	1898, Pt. I, p. 870.
The District of Sylhet	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushái Hills)	Ditto	1897, Pt. I, p. 299.

It has been declared, by notification under s. 3 (*b*) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul. *See* Gazette of India, 1886, Pt. I, p. 301.

It has been extended, by notification under s. 5 of the same Act, to the Scheduled Districts of Kumáon and Garhwal. *See* Gazette of India, 1876, Pt. I, p. 606.

[2] The words " and of the East India Company " were repealed by the Repealing Act, 1870 (14 of 1870).

of Her Majesty [1] * * * * in India, and for punishing persons who aid and encourage such deserters; It is enacted as follows:—

Penalty on master in certain cases if a deserter be concealed on board his ship.

1. If it shall appear that any officer or soldier, being a deserter from the said Forces, has been concealed on board any merchant vessel, and that the master or person in charge of such vessel for the time being, though ignorant of the fact of such concealment, might have known of the same but for some neglect of his duty as such master or person, or for the want of proper discipline on board his vessel, such master or person shall be liable to a fine not exceeding five hundred rupees:

Proviso.

Provided always that no conviction for such offence as is hereinbefore described shall be lawful unless the same shall be stated in the charge which the party is called upon to answer; and in such charge it shall be lawful to state in the alternative that the party has either knowingly harboured or concealed a deserter on board his vessel, or has, by neglect of duty or by reason of the want of proper discipline on board the vessel, allowed such deserter to be so concealed.

Charge may be in the alternative.

Jurisdiction.

2. Any person, whether a European British subject or not, who shall be guilty of an offence punishable under this Act, shall be punishable for the same by any Justice of the Peace for any of the Presidency-towns of Calcutta, Madras and Bombay, [2] * * * Magistrate, [3] * * or person lawfully exercising the powers of a Magistrate in any port within the territories of the East India Company within whose jurisdiction the offence may have been committed, or such person may have been apprehended or found, whether the offence shall have been committed within the local limits of the jurisdiction of such officer or not; and any person hereby made punishable by a Justice of the Peace shall be punishable on summary conviction.

Conviction to be quashed on merits only. Form of conviction, etc.

3. No conviction, order or judgment of any Justice of the Peace shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order or judgment, the evidence on which it proceeds; but the depositions taken, or a copy of them, shall be returned with the conviction, order or judgment, in obedience to any writ of *certiorari;* and, if no jurisdiction appears on the face of the conviction, order or judgment, but the depositions taken supply that defect, the conviction, order or judgment shall be aided by what so appears in such depositions.

Saving of proceedings under other Acts.

4. Nothing in this Act contained shall prevent any Justice of the Peace, Magistrate or other officer having authority in that behalf from committing for trial any person who shall be charged with an offence punishable under [4] * * * any other Act hereafter to be in force,

[1] The words " and of the East India Company " were repealed by the Repealing Act, 1870 (14 of 1870).

[2] The words " or for any of the Settlements of Prince of Wales' Island, Singapore and Malacca " were repealed by the Repealing Act, 1874 (16 of 1874).

[3] The words " Joint Magistrate " were repealed by the Repealing Act, 1873 (12 of 1873).

[4] The words and figures " Act No. 14 of 1849, or," were repealed by the Repealing Act, 1874 (16 of 1874).

notwithstanding that such offence may be also punishable under this Act: Provided that no proceedings shall have been had against such person in respect of the same offence under this Act.

Proviso.

Commanding Officer or Magistrate may issue warrants for apprehension of deserters.

5. Whenever, on information given on oath or solemn affirmation, where by law a solemn affirmation may be used instead of an oath, to the commanding officer of any fort, garrison, station, regiment or detachment, at any port or place within the territories of the East India Company, in which no person lawfully exercising magisterial powers can be found, which oath or affirmation the several persons above named shall severally under this Act have power to administer;

or whenever, on such information as aforesaid given to any Justice of the Peace, Magistrate [1]* * or person lawfully exercising the powers of a Magistrate, having jurisdiction within such port or place,

there shall appear reason to suspect that any European officer or soldier belonging to the said Forces, who may have deserted or be absent without leave, is on board any ship, vessel or boat, or is concealed on shore at any such port or place within the territories of the East India Company, it shall be lawful for such commanding officer or Justice of the Peace, Magistrate [1] * * or person lawfully exercising the powers of a Magistrate as aforesaid, to issue a warrant authorizing the person or persons to whom such warrant may be addressed to enter into and search, at any time of the day or night, any such ship, vessel or boat, or any house or place on shore, and to apprehend any such officer or soldier, and to detain him in custody in order to his being dealt with according to law.

Warrant to whom to be addressed and by whom to be executed.

6. The warrant to be issued under the preceding section may be addressed to any European officer or soldier of the said Forces, or to all constables, peace-officers, and other persons who may be bound to execute the warrant of any Justice of the Peace, Magistrate [1]* * or person lawfully exercising the powers of a Magistrate, and acting in the execution of this Act; and all such persons shall be bound to execute, perform and obey such warrant[2].

Persons apprehended how to be dealt with, etc.

7. Every person who shall be apprehended under any warrant under the fifth section of this Act shall be brought without delay before a Justice of the Peace, Magistrate [1] * * or person lawfully exercising the powers of a Magistrate, in or near the place wherein such person shall have been arrested, who shall examine such person, and, if he shall be satisfied, either by the confession of such person or the testimony of one or more witness or witnesses, or by his own knowledge, that such person is a deserter from the said Forces, shall cause him to be delivered, together with any depositions and papers relative to the case, to the

[1] The words " Joint Magistrate " were repealed by the Repealing Act, 1873 (12 of 1873).

[2] Under Code of Criminal Procedure, 1898, s. 54, cl. 6, a police-officer may now, without orders from a Magistrate and without a warrant, arrest any persons reasonably suspected of being a deserter from Her Majesty's Army. *See* Act 5 of 1898, Genl. Acts, Vol. V.

commanding officer of the regiment, corps or detachment to which he shall belong, if the same shall be in or near the place of such arrest, or, if otherwise, then to the commanding officer of the nearest military station, in order that he may be dealt with according to law.

ACT No. XV OF 1856 [1].

[*25th July, 1856.*]

An Act to remove all legal obstacles to the marriage of Hindu Widows.

Preamble. WHEREAS it is known that, by the law as administered in the Civil

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[1] Short title, "The Hindu Widows' Re-marriage Act, 1856." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared to be in force in—

the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II;

the Santhál Parganas, by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), Ben. Code, Vol. I;

the Arakan Hill District, by the Arakan Hill District Laws Regulation, 1874 (9 of 1874), Bur. Code;

Angul District by the Angul District Regulation, 1894 (1 of 1894), Ben. Code Vol. I.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India, 1880, Pt. I, p. 672.	
West Jalpáiguri . . .	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum .	Ditto	1881, Pt. I, p. 504.
Kumáon and Garhwál . .	Ditto	1876, Pt. I, p. 605.
The Scheduled portion of the Mirzápur District . . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Peshawar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application to that part of the Hazára District known as Upper Tanawal has been barred by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punjab and N.-W. Code*) . . .	Ditto	1886, Pt. I, p. 48

Courts established in the territories in the possession and under the Government of the East India Company, Hindu widows with certain exceptions are held to be, by reason of their having been once married, incapable of contracting a second valid marriage, and the offspring of such widows by any second marriage are held to be illegitimate and incapable of inheriting property;

and whereas many Hindus believe that this imputed legal incapacity, although it is in accordance with established custom, is not in accordance with a true interpretation of the precepts of their religion, and desire that the civil law administered by the Courts of Justice shall no longer prevent those Hindus who may be so minded from adopting a different custom, in accordance with the dictates of their own conscience;

and whereas it is just to relieve all such Hindus from this legal incapacity of which they complain, and the removal of all legal obstacles to the marriage of Hindu widows will tend to the promotion of good morals and to the public welfare; It is enacted as follows:—

Marriage of Hindu widows legalized.

1. No marriage contracted between Hindus shall be invalid, and the issue of no such marriage shall be illegitimate, by reason of the woman having been previously married or betrothed to another person who was dead at the time of such marriage, any custom and any interpretation of Hindu law to the contrary notwithstanding.

Rights of widow in deceased husband's property to cease on her re-marriage.

2. All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to-

The District of Lahaul . .	*See* Gazette of India,	1886, Pt. I, p. 301.
The Scheduled Districts of the Central Provinces . . .	Ditto	1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam .	Ditto	1898, Pt. I, p. 870.
Coorg	Ditto	1878, Pt. I, p. 747.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The Districts of Kámrup, Naugong, Darrang, Sibságar, Lakhimpur, Goálpára (excluding the Eastern Dvárs) and Cachar (excluding the North Cachar Hills) . .	Ditto	1878, Pt. I, p. 533.
The Gáro Hills, the Khási and Jaintiá Hills, the Nága Hills, the North Cachar Hills in the Cachar District and the Eastern Dvárs in the Goalpárá District . .	Ditto	1897, Pt. I, p. 299.
The Porahat Estate in the Singbhum District . . .	Ditto	1897, Pt. I, p. 1059.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

The Tarái District . . .	*See* Gazette of India,	1876, Pt. I, p. 505.
The Andaman and Nicobar Islands	Ditto	1882, Pt. I, p. 148.

re-marry, only a limited interest in such property, with no power of alienating the same, shall upon her re-marriage cease and determine as if she had then died; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same.

Guardianship of children of deceased husband on the re-marriage of his widow.

3. On the re-marriage of a Hindu widow, if neither the widow nor any other person has been expressly constituted by the will or testamentary disposition of the deceased husband the guardian of his children the father or paternal grandfather or the mother or paternal grandmother, of the deceased husband, or any male relative of the deceased husband, may petition the highest Court having original jurisdiction in civil cases in the place where the deceased husband was domiciled at the time of his death for the appointment of some proper person to be guardian of the said children, and thereupon it shall be lawful for the said Court, if it shall think fit, to appoint such guardian, who when appointed shall be entitled to have the care and custody of the said children, or of any of them during their minority, in the place of their mother; and in making such appointment the Court shall be guided, so far as may be by the laws and rules in force touching the guardianship of children who have neither father nor mother:

Provided that, when the said children have not property of their own sufficient for their support and proper education whilst minors, no such appointment shall be made otherwise than with the consent of the mother unless the proposed guardian shall have given security for the support and proper education of the children whilst minors.

Nothing in this Act to render any childless widow capable of inheriting.

4. Nothing in this Act contained shall be construed to render any widow who, at the time of the death of any person leaving any property, is a childless widow, capable of inheriting the whole or any share of such property, if before the passing of this Act, she would have been incapable of inheriting the same by reason of her being a childless widow.

Saving of rights of widow marrying, except as provided in sections 2 and 4.

5. Except as in the three preceding sections is provided, a widow shall not, by reason of her re-marriage forfeit any property or any right to which she would otherwise be entitled; and every widow who has re-married shall have the same rights of inheritance as she would have had, had such marriage been her first marriage.

Ceremonies constituting valid marriage to have same effect on widow's marriage.

6. Whatever words spoken, ceremonies performed or engagements made on the marriage of a Hindu female who has not been previously married, are sufficient to constitute a valid marriage, shall have the same effect if spoken, performed or made on the marriage of a Hindu widow; and no marriage shall be declared invalid on the ground that such words, ceremonies or engagements are inapplicable to the case of a widow.

Consent to re-marriage of minor widow.

7. If the widow re-marrying is a minor whose marriage has not been consummated, she shall not re-marry without the consent of her father, or if she has no father, of her paternal grandfather, or if she has no such grandfather, of her mother, or, failing all these, of her elder brother, or failing also brothers, of her next male relative.

Punishment for abetting marriage made contrary to this section.

All persons knowingly abetting a marriage made contrary to the provisions of this section shall be liable to imprisonment for any term not exceeding one year or to fine or to both.

Effect of such marriage. Proviso.

And all marriages made contrary to the provisions of this section may be declared void by a Court of law: Provided, that in any question regarding the validity of a marriage made contrary to the provisions of this section, such consent as is aforesaid shall be presumed until the contrary is proved, and that no such marriage shall be declared void after it has been consummated.

Consent to re-marriage of major widow.

In the case of a widow who is of full age, or whose marriage has been consummated, her own consent shall be sufficient consent to constitute her re-marriage lawful and valid.

ACT No. II OF 1857 [1].

[*24th January, 1857.*]

An Act to establish and incorporate an University at Calcutta.

Preamble.

WHEREAS, for the better encouragement of Her Majesty's subjects of all classes and denominations within the Presidency of Fort William in Bengal and other parts of India in the pursuit of a regular and liberal course of education, it has been determined to establish an University at Calcutta for the purpose of ascertaining, by means of examination, the persons who have acquired proficiency in different branches of Literature, Science, and Art, and of rewarding them by Academical Degrees [2] as evidence of their respective attainments, and marks of honour proportioned thereunto; and whereas, for effectuating the purposes aforesaid,

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[1] Short title, "The Calcutta University Act, 1857." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

[2] For powers conferring Degrees, *see* the Indian Universities Act, 1904 (8 of 1904), Genl. Acts, Vol. VI.

it is expedient that such University should be incorporated; It is enacted as follows [1]* * * * :—

Incorporation.

The following persons, namely,

The Right Honourable CHARLES JOHN VISCOUNT CANNING,
Governor General of India,

The Honourable JOHN RUSSELL COLVIN,
Lieutenant-Governor of the North-Western Provinces,

The Honourable FREDERICK JAMES HALLIDAY,
Lieutenant-Governor of Bengal,

The Honourable Sir JAMES WILLIAM COLVILE, Knight.
Chief Justice of the Supreme Court of Judicature in Bengal,

The Right Reverend DANIEL WILSON,
Doctor of Divinity, Bishop of Calcutta,

The Honourable GEORGE ANSON, General,
Commander-in-Chief of the Forces in India,

The Honourable JOSEPH ALEXANDER DORIN,
Member of the Supreme Council of India,

The Honourable JOHN LOW, Major-General,
Companion of the Most Honourable Order of the Bath, Member of the Supreme Council of India,

The Honourable JOHN PETER GRANT,
Member of the Supreme Council of India,

The Honourable BARNES PEACOCK,
Member of the Supreme Council of India,

CHARLES ALLEN, Esquire,
Member of the Legislative Council of India,

HENRY RICKETTS, Esquire,
Provisional Member of the Supreme Council of India,

[1] The words and parentheses " (that is to say) " were repealed by the Repealing Act, 1876 (12 of 1876).

CHARLES BINNY TREVOR, Esquire,
Judge of the Sudder Court in Bengal,

Prince GHOLAM MUHAMMUD,

WILLIAM RITCHIE, Esquire,
Advocate-General in Bengal,

CECIL BEADON, Esquire,
Secretary to the Government of India,

Colonel HENRY GOODWYN, of the Bengal Engineers,
Chief Engineer in Bengal,

WILLIAM GORDON YOUNG, Esquire,
Director of Public Instruction in Bengal,

Lieutenant-Colonel WILLIAM ERSKINE BAKER, of the Bengal Engineers,
Secretary to the Government of India,

Lieutenant-Colonel ANDREW SCOTT WAUGH, of the Bengal Engineers,
Surveyor-General of India,

KENNETH MACKINNON, Esquire,
Doctor in Medicine,

HODGSON PRATT, Esquire,
Inspector of Schools in Bengal,

HENRY WALKER, Esquire,
Professor of Anatomy and Physiology in the Medical College of Bengal,

THOMAS THOMSON, Esquire,
Doctor in Medicine, Superintendent of the Botanical Garden at Calcutta,

FREDERICK JOHN MOUAT, Esquire,
Doctor in Medicine, and Fellow of the Royal College of Surgeons,

Lieutenant WILLIAM NASSAU LEES, of the Bengal Infantry,

The Reverend WILLIAM KAY,
Doctor of Divinity, Principal of Bishop's College,

The Reverend ALEXANDER DUFF,
Doctor of Divinity,

THOMAS OLDHAM, Esquire,
Superintendent of the Geological Survey of India,

HENRY WOODROW, Esquire,
Inspector of Schools in Bengal,

LEONIDAS CLINT, Esquire,
Principal of the Presidency College,

PROSONNO COOMAR TAGORE,
Clerk Assistant of the Legislative Council of India,

RAMAPERSHAD ROY, Government Pleader in the Sudder Court of Bengal,

The Reverend JAMES OGILVIE, Master of Arts,

The Reverend JOSEPH MULLENS, Bachelor of Arts,

MOLAVY MUHAMMAD WUJEEH, Principal of the Calcutta Mudrasah,

ISHWAR CHUNDER BIDYA SAGUR,
Principal of the Sanskrit College of Calcutta,

RAMGOPAL GHOSE,
Formerly Member of the Council of Education,

ALEXANDER GRANT, Esquire,
Apothecary to the East India Company,

HENRY STEWART REID, Esquire,
Director of Public Instruction in the North-Western Provinces,

being the first Chancellor, Vice-Chancellor and Fellows of the said University, and all the persons who may hereafter become or be appointed to be Chancellor, Vice-Chancellor or Fellows as hereinafter mentioned, so long as they shall continue to be such Chancellor, Vice-Chancellor or Fellows, are hereby constituted and declared to be one Body Politic and Corporate by the name of the University of Calcutta;

and such Body Politic shall by such name have perpetual succession, and shall have a common seal, and by such name shall sue and be sued,

implead and be impleaded, and answer and be answered unto, in every Court of Justice within the territories [1] * * * and under the Government of [1] * * India [1] *.

Power to hold and dispose of property.

2. The [2] * Body Corporate shall be able and capable in law to take, purchase and hold any property, moveable or immoveable, which may become vested in it for the purposes of the [2] * University by virtue of any purchase, grant, testamentary disposition or otherwise; and shall be able and capable in law to grant, demise, alien or otherwise dispose of all or any of the property, moveable or immoveable, belonging to the [2] * University; and also to do all other matters incidental or appertaining to a Body Corporate.

Senate. Office vacated by leaving India.

3. [2] * * * * * If any person, being Chancellor, Vice-Chancellor or Fellow of the said University, shall leave India without the intention of returning thereto, his office shall thereupon become vacant.

Chancellor.

4. The Governor General of India for the time being shall be the Chancellor of the said University [3] * * * *.

Vice-Chancellor.

5. [3] * * * * The office of Vice-Chancellor shall be held for two years only; [4] * * * * * * * * *.

Whenever a vacancy shall occur in the office of Vice-Chancellor of the said University by death, resignation, departure from India, effluxion of time or otherwise, the Governor General of India in Council shall, by notification [5] * * * *, nominate a fit and proper person, being one of the Fellows of the said University, to be Vice-Chancellor in the room of the person occasioning such vacancy:

Provided that, on any vacancy in the said office which shall occur by effluxion of time, the Governor General of India in Council shall have power to re-appoint [4] * * * * * * * * * any future Vice-Chancellor to such office.

6. [*Fellows.*] *Rep. by the Indian Universities Act, 1904 (VIII of 1904), s. 29.*

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[1] The words " in the possession," and " the East " and the word " Company " were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[2] The word " said " wherever it occurred in s. 2 and the words " The said Body Corporate shall consist of one Chancellor, one Vice-Chancellor, and such number of *ex-officio* and other Fellows as the Governor General of India in Council hath already appointed, or shall from time to time, by any order published in the Calcutta Gazette. hereafter appoint; and the Chancellor, Vice-Chancellor and Fellows for the time being shall constitute the Senate of the Said University: Provided that " in s. 3 were repealed by s. 29 of the Indian Universities Act, 1904 (8 of 1904), Genl. Acts, Vol VI.

[3] The words "and the first Chancellor shall be the Right Honourable Charles John Viscount Canning " in s. 4 and the words " The first Vice-Chancellor of the said University shall be Sir James William Colvile, Knight " in s. 5 were repealed by the Repealing Act, 1876 (12 of 1876).

[4] The words " and the Vice-Chancellor hereinbefore nominated shall go out of office on the first day of January, 1859 " in the first paragraph of s. 5, and the words " the Vice-Chancellor hereinbefore nominated or " in the proviso were repealed by the Repealing Act, 1876 (12 of 1876).

[5] The words " in the Calcutta Gazette " were repealed by s. 29 of the Indian Universities Act, 1904 (8 of 1904), Genl. Acts, Vol. VI.

7. The Governor General of India in Council may cancel the appointment of any person already appointed, or hereafter to be appointed, a Fellow of the University, and, as soon as such order is notified in the Gazette, the person so appointed shall cease to be a Fellow. The appointment of a Fellow may be cancelled

8. The Chancellor, Vice-Chancellor and Fellows for the time being shall have the entire management of and superintendence over the affairs, concerns and property of the said University; and in all cases unprovided for by this Act, it shall be lawful for the Chancellor, Vice-Chancellor and Fellows to act in such manner as shall appear to them best calculated to promote the purposes intended by the said University. Chancellor Vice-Chancellor and Fellows to superintend the affairs of the University.

[1] * * * * * * * * * * *

9. [*Meetings of the Senate.*] *Rep. by s. 29, Indian Universities Act, 1904 (8 of 1904).*

10. [*Appointment and removal of Examiners and Officers.*] *Rep. by s. 29, Indian Universities Act, 1904 (8 of 1904).*

11. [*Power to confer degrees.*] *Rep. by s. 29, Indian Universities Act, 1904 (8 of 1904).*

12. [*Qualification for admission of candidates for degrees.*] *Rep. by s. 29, Indian Universities Act, 1904 (8 of 1904).*

13. [*Examination for degrees.*] *Rep. by s. 29, Indian Universities Act, 1904 (8 of 1904).*

14. [*Grant of degrees.*] *Rep. by s. 29, Indian Universities Act, 1904 (8 of 1904).*

15. The said Chancellor, Vice-Chancellor and Fellows shall have power to charge such reasonable fees for the degrees to be conferred by them, and upon admission into the said University, and for continuance therein, as they, with the approbation of the Governor General of India in Council, shall from time to time see fit to impose. Fees.

Such fees shall be carried to one General Fee Fund for the payment of expenses of the said University, under the directions and regulations of the Governor General of India in Council, to whom the accounts of income and expenditure of the said University shall once in every year be submitted for such examination and audit as the said Governor General of India in Council may direct. Annual accounts.

[1] The last two paras. and the proviso of s. 8 relating to Bye-laws were repealed by s. 29 of the Indian Universities Act, 1904 (8 of 1904), Genl. Acts, Vol. VI.

ACT No. XI OF 1857 [1].

[*30th May, 1857.*]

An Act for the prevention, trial and punishment of offences against the State.

Preamble. WHEREAS it is necessary to make due provision for the prevention,

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[1] Short title, "The State Offences Act, 1857." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by s. 3 of the Laws Local Extent Act, 1874 (15 of 1874), Genl. Acts, Vol. II.

It has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 4 (*1*), Bur. Code; in the Angul District by the Angul District Regulation, 1894 (1 of 1894), s. 3, Ben. Code; in the Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (9 of 1874), s. 3, Bur. Code; in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (1 of 1890), s. 3, Bal. Code; in the Chin Hills as regards the hill-tribes by the Chin Hills Regulation, 1896 (5 of 1896), s. 3; in the Kachin Hill-tracts, as regards hill-tribes, by the Kachin Hill-tribes Regulation, 1895 (1 of 1895), s. 3, Bur. Code; and in the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (1 of 1900), E. B. & A. Code, Vol. I.

It has also been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India, 1880, Pt. I, p. 672.	
West Jalpáiguri and the Western Duárs . . .	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohardaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum .	Ditto	1881, Pt. I, p. 504.
Kumáon and Garhwál . .	Ditto	1876, Pt. I, p. 605.
The Scheduled portion of the Mirzápur District . . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Peshawar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application to that portion of the Hazára District known as Upper Tanawal has been barred by the Hazára (Upper Tanawal) Regulation, (2 of 1900), Punjab and N.-W. Code*) . . .	Ditto	1881, Pt. I, p. 48.
The District of Lahaul . .	Ditto	1886, Pt. I, p. 301.
The Scheduled Districts of the Central Provinces . . .	Ditto	1879, Pt. I, p. 771.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushái Hills) . .	Ditto	1897, Pt. I, p. 299.
The Porahat Estate in the Singbhum District . .	Ditto	1897, Pt. I, p. 1059.

It has been extended, under s. 5 of the last-mentioned Act, to the Tarái of the

trial and punishment of offences against the State; It is enacted as follows:—

1. [*Punishment for rebellion or for waging war against the Government.*] *Rep. by Act XVII of 1862.*

2. [*Punishment for harbouring or concealing offenders.*] *Rep. by Act XVII of 1862.*

Executive Government may issue a commission for the trial of persons charged with certain offences in any proclaimed district.

3. *Clause 1.*—Whenever the Executive Government of any presidency or place [1] * * * * shall proclaim that any district subject to its government is or has been in a state of [2] rebellion it shall be lawful for such Government to issue a commission for the trial of all persons who shall be charged with having committed within such district, after a day to be specified in the commission, [1] * * * crime against the State, or murder, arson, robbery or other heinous crime against person or property.

Court may be held in any part of the district.

Clause 2.—The Commissioner or Commissioners authorized by any such commission may hold a Court in any part of the said district mentioned in the commission, and may there try any person for any of the said crimes committed within any part thereof; it being the intention of this Act that the district mentioned in the commission shall, for the purpose of trial and punishment of any of the said offences, be deemed one district.

Government may vest certain power in the Court.

4. It shall be lawful for the Executive Government, by such commission, to direct that any Court held under the commission shall have power, without [3] * * * * * * * * * * the assistance of assessors, to pass upon every person convicted before the Court of any of the aforesaid crimes any sentence warranted by law for such crime; and that the judgment of such Court shall be final and conclusive; and that the said Court shall not be subordinate to the Sádr Court.

Magistrate may commit for trial before Court held under this Act.

5. If a commission be issued under the authority of this Act, any Magistrate within the district which is described in the commission may commit persons charged with any of the aforesaid crimes within such district for trial before a Court to be held under this Act.

Act not to apply to British-born subjects or their children.

6. Nothing in this Act shall extend to the trial or punishment of any of Her Majesty's natural-born subjects born in Europe, or of the children of such subjects.

Province of Agra, *see* Gazette of India, 1876, Pt. I, p. 505, and to the Scheduled Districts in Ganjam and Vizagapatam, *see* Gazette of India, 1898, Pt. 1, p. 872.

It has been applied to the Baluchistan Agency Territories by the Baluchistan Agency Laws Law, 1890, s. 4 (*1*), Bal. Code. Ed. 1900, p. 307.

[1] The words " within the said territories " and the words " any of the crimes mentioned in the preceding sections, or any other " in s. 3, cl. 1 were repealed by the Repealing Act, 1876 (12 of 1876).

[2] That is a disturbed district " in which any great interval between conviction and punishment must deprive the punishment of its due effect " (Mr. Peacock's Statement of Objects and Reasons).

[3] The words " the attendance or futwa of a Law Officer or " were repealed by the Repealing Act, 1876 (12 of 1876).

7 to 10. [*Possession, etc., of arms.*] *Rep. by the Repealing Act, 1876 (XII of 1876).*

Interpretation-clause.

11. The word "Magistrate" in this Act shall include any person [1] * * * * * * specially authorized by the Executive Government to exercise the powers vested in a Magistrate by this Act.

ACT No. XXII OF 1857 [2].

[*18th July, 1857.*]

An Act to establish and incorporate an University at Bombay.

Preamble.

WHEREAS, for the better encouragement of Her Majesty's subjects of all classes and denominations within the Presidency of Bombay and other parts of India in the pursuit of a regular and liberal course of education, it has been determined to establish an University at Bombay for the purpose of ascertaining, by means of examination, the persons who have acquired proficiency in different branches of literature, science and art, and of rewarding them by academical [3] degrees as evidence of their respective attainments, and marks of honour proportioned thereunto; and whereas, for effectuating the purposes aforesaid, it is expedient that such University should be incorporated; It is enacted as follows: [4] * * * *

Incorporation.

The following persons, namely,—

The Right Honourable JOHN, LORD ELPHINSTONE,
Governor of Bombay,

The Honourable Sir WILLIAM YARDLEY, Knight,
Chief Justice of the Supreme Court of Judicature at Bombay,

The Right Reverend JOHN HARDING,
Doctor of Divinity, Bishop of Bombay, *ex officio*,

The Honourable Sir HENRY SOMERSET, Lieutenant-General,
Knight Companion of the Most Honourable Order of the Bath,
Commander-in-Chief of the Forces in Bombay, *ex officio*,

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[1] The words "lawfully exercising the powers of a Magistrate and any Assistant to a Magistrate or Deputy Magistrate," were repealed by the Repealing Act, 1876 (12 of 1876).

[2] Short title, "The Bombay University Act, 1857." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

[3] For powers conferring Degrees, *see* the Indian Universities Act, 1904 (8 of 1904), Genl. Acts, Vol. VI.

[4] The words and parentheses "(that is to say)" in the preamble were repealed by the Repealing Act, 1876 (12 of 1876).

The Honourable JAMES GRANT LUMSDEN,
Member of the Council of Bombay, *ex officio*,

The Honourable ARTHUR MALET,
Member of the Council of Bombay, *ex officio*,

EDWARD IRVINE HOWARD, Esquire,
Director of Public Instruction, *ex officio*,

ROBERT HAINES, Esquire, M.D.,
Acting Educational Inspector, Presidency Division, *ex officio*,

C. MOREHEAD, Esquire, M.D.,
Principal of the Grant Medical College, *ex officio*,

JOHN HARKNESS, Esquire, LL.D.,
Principal of the Elphinstone College, *ex officio*,

The Reverend JAMES MCDOUGALL,
Acting Principal of the Poona College, *ex officio*,

PHILIP WILLIAM LEGEYT, Esquire,
Member of the Legislative Council of India,

The Honourable Sir MATTHEW RICHARD SAUSSE, Knight,
Puisne Judge of the Supreme Court of Judicature at Bombay,

Sir JAMSETJEE JEEJEEBHOY, Knight,

METCALFE LARKEN, Esquire,
Judge of the Sudder Court in Bombay, and President
of the late Board of Education,

JUGGONAUTH SUNKERSETT, Esquire,
Member of the late Board of Education,

BOMANJEE HORMUSJEE, Esquire,
Member of the late Board of Education,

BHAO DAJEE, Esquire,
Graduate of the Grant Medical College,
Member of the late Board of Education,

MATTHEW STOVELL, Esquire,
Surgeon in the Bombay Army,
Secretary to the late Board of Education,

CLAUDIUS JAMES ERSKINE, Esquire,
Civil Service, late Director of Public Instruction,

WILLIAM EDWARD FRERE, Esquire,
Member of the Royal Asiatic Society, and
President of the Bombay Branch of the Royal Asiatic Society,
Judge of the Sudder Court in Bombay,

Major-General CHARLES WADDINGTON,
Companion of the Most Honourable Order of the Bath,
Chief Engineer of Public Works,

The Reverend JOHN WILSON,
Doctor of Divinity, Fellow of the Royal Society,
Honorary President of the Bombay Branch of the Royal Asiatic Society,

The Reverend PHILIP ANDERSON, Master of Arts,
Chaplain on the Bombay Establishment,

HENRY BARTLE EDWARD FRERE, Esquire,
Commissioner in Sindh,

Lieutenant EDWARD FREDERICK TIERNEY FERGUSSON, Indian Navy,

MAHOMED YUSOOF MOORGAY, Kazi of Bombay,

JAMES JOHN BERKLEY, Esquire,
Fellow of the Geographical Society, M.I.C.E.,

President of the Bombay Mechanics Institution, and
Chief Resident Engineer of the Great Indian Peninsular Railway Company,

HENRY LACON ANDERSON, Esquire,
Secretary to Government,

being the first Chancellor, Vice-Chancellor and Fellows of the said University, and all the persons who may hereafter become or be appointed to be Chancellor, Vice-Chancellor or Fellows as hereinafter mentioned, so long as they shall continue to be such Chancellor, Vice-Chancellor or

Fellows, are hereby constituted and declared to be one Body Politic and Corporate by the name of the University of Bombay;

and such Body Politic shall by such name have perpetual succession, and shall have a common seal, and by such name shall sue and be sued, implead and be impleaded, and answer and be answered unto, in every Court of Justice within the territories [1] * * * *, and under the Government of [1] * * India [1] *.

Power to hold and dispose of property.

2. The [2] * Body Corporate shall be able and capable in law to take, purchase and hold any property, moveable or immoveable, which may become vested in it for the purposes of the [2] * University by virtue of any purchase, grant, testamentary disposition or otherwise; and shall be able and capable in law to grant, demise, alien or otherwise dispose of all or any of the property, moveable or immoveable, belonging to the [2] * University; and also to do all other matters incidental or appertaining to a Body Corporate.

3. [*Constitution of Body Corporate.*] *Rep. by s. 29, Indian Universities Act, 1904 (8 of 1904).*

Office vacated by leaving India.

[2] * * If any person being Chancellor, Vice-Chancellor or Fellow of the said University, shall leave India without the intention of returning thereto, his office shall thereupon become vacant.

Chancellor.

4. The Governor of Bombay for the time being shall be the Chancellor of the said University [3] * * * *.

Vice-Chancellor.

5. [3] * * * The Office of Vice-Chancellor shall be held for two years only; [4] * * * * * *

Whenever a vacancy shall occur in the office of Vice-Chancellor of the said University by death, resignation, departure from India, effluxion of time or otherwise, the Governor of Bombay in Council shall, by notification in the Bombay Gazette, nominate a fit and proper person, being one of the Fellows of the said University, to be Vice-Chancellor in the room of the person occasioning such vacancy:

Provided that, on any vacancy in the said office which shall occur by effluxion of time, the Governor of Bombay in Council shall have power to re-appoint [4] * * * * * any future Vice-Chancellor, to such office.

6. [*Fellows.*] *Rep. by s. 29 of the Indian Universities Act, 1904 (8 of 1904).*

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[1] The words " in the possession," and " the East " and the word " Company " were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[2] The word " said " wherever it occurred in s. 2 and the words " Provided that " in s. 3, were repealed by s. 29 of the Indian Universities Act, 1904 (8 of 1904), Genl. Acts, Vol. VI.

[3] The words " and the first Chancellor shall be the Right Honourable John, Lord Elphinstone " in s. 4, and the words " The first Vice Chancellor of the said University shall be Sir William Yardley, Knight," in s. 5 were repealed by the Repealing Act, 1876 (12 of 1876), s. 1.

[4] The words " and the Vice-Chancellor hereinbefore nominated shall go out of office on the first day of January 1859 " in s. 5 and " the Vice-Chancellor hereinbefore nominated or " in the Proviso were repealed by the Repealing Act, 1876 (12 of 1876).

The appointment of a Fellow may be cancelled.

7. The Governor of Bombay in Council may cancel the appointment of any person already appointed or hereafter to be appointed a Fellow of the University and, as soon as such order is notified in the Gazette, the person so appointed shall cease to be a Fellow.

Chancellor, Vice-Chancellor and Fellows to superintend the affairs of the University.

8. The Chancellor, Vice-Chancellor and Fellows for the time being shall have the entire management of and superintendence over the affairs, concerns and property of the said University; and, in all cases unprovided for by this Act, it shall be lawful for the Chancellor, Vice-Chancellor and Fellows to act in such manner as shall appear to them best calculated to promote the purposes intended by the said University.

[1] * * * * * * * * * * *

9. [*Meetings of the Senate.*] *Rep. by s. 29 of the Indian Universities Act, 1904 (8 of 1904).*

10. [*Appointment and removal of Examiners and Officers.*] *Rep. by s. 29 of the Indian Universities Act, 1904 (8 of 1904).*

11. [*Power to confer degrees.*] *Rep. by s. 29 of the Indian Universities Act, 1904 (8 of 1904).*

12. [*Qualification for admission of candidates for degrees.*] *Rep. by s. 29 of the Indian Universities Act, 1904 (8 of 1904).*

13. [*Examination for degrees.*] *Rep. by s. 29 of the Indian Universities Act, 1904 (8 of 1904).*

14. [*Grant of degrees.*] *Rep. by s. 29 of the Indian Universities Act, 1904 (8 of 1904).*

Fees.

15. The said Chancellor, Vice-Chancellor and Fellows shall have power to charge such reasonable fees for the degrees to be conferred by them, and upon admission into the said University, and for continuance therein, as they, with the approbation of the Governor of Bombay in Council, shall from time to time see fit to impose.

Annual accounts.

Such fees shall be carried to one General Fee Fund for the payment of expenses of the said University, under the directions and regulations of the Governor of Bombay in Council, to whom the accounts of income and expenditure of the said University shall once in every year be submitted for such examination and audit as the said Governor of Bombay in Council may direct.

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[1] The last two paragraphs and the proviso to s. 8 relating to Bye-laws were repealed by s. 29 of the Indian Universities Act, 1904 (8 of 1904), Genl. Acts, Vol. VI.

ACT No. XXV. OF 1857 [1].

[*8th August, 1857.*]

An Act [2]* * * * * * to provide for the adjudication and recovery of forfeitures of property in certain cases.

Preamble.

WHEREAS it is expedient [3]* * * *to provide for the adjudication and recovery of forfeitures in certain cases; It is enacted as follows:—

1. [*Forfeiture of property on conviction of mutiny.*] *Rep. by the Indian Articles of War (Act V of 1869), Pt. I (c).*

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[1] Short title, "The Forfeiture Act, 1857." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act, supplemented by the Forfeiture Act, 1859 (9 of 1859), printed *infra*, has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by s. 3 of the Laws Local Extent Act, 1874 (15 of 1874), Genl. Acts, Vol. II.

It has been declared to be in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 4 (*1*) and Schedule I, Bur. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India, 1880, Pt. I, p. 672.	
West Jalpáiguri, and the Western Dvars	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum .	Ditto	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzápur District . . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.

The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application has been barred to that portion of the Hazára District known as Upper Tanawal by the Hazára (Upper Tanawal) Regulation (2 of 1900), Punjab and N.-W. Code*). *See* Gazette of India, 1886, Pt. I, p. 48.

The Scheduled Districts of the Central Provinces . . .	*See* Gazette of India, 1879, Pt. I, p. 771.	
The Scheduled Districts in Ganjam and Vizagapatam .	Ditto	1898, Pt. I, p. 870.
The District of Sylhet .	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushái Hills) . .	Ditto	1897, Pt. I, p. 299.
The Porahat Estate in the Singbhum District . . .	Ditto	1897, Pt. I, p. 1059.

It has also been declared, by notification under s. 3 (*b*) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul. *See* Gazette of India, 1886, Pt. I, p. 301.

[2] The words "to render officers and soldiers in the Native Army liable to forfeiture of property for mutiny, and" in the title were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[3] The words "to render officers and soldiers in the Native Army, who shall be convicted of mutiny, subject to the forfeiture of all their property, and" in the Preamble were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

Adjudication of forfeiture in case of death or escape of offender before conviction of offence for which property is liable to be forfeited.

2. If any person who shall have committed treason or any offence for which, [1] [by the Indian Penal Code, section 121 or section 122, or the Indian Articles of War, article 24], his property is declared to be forfeited, shall have been killed, or shall have died, or shall have escaped out of the territories of the East India Company, before he shall have been convicted of the offence, or cannot after diligent search be found, any Court or other authority which might have tried such offender, if he could have been brought to trial, shall, upon the application of the Magistrate [2] or other officer authorized by Government to make such application, hold an enquiry, and on proof that the person charged with having committed the offence was guilty thereof, and that he is dead, or has escaped out of the territories of the East India Company, or cannot, after diligent search be found, shall adjudge that all the property of such offender shall be forfeited to Government. XLV of 1860. V of 1869.

Forfeiture to extend to all property possessed by offender at the date of offence.

3. The forfeiture, whether upon conviction of such an offence as aforesaid or upon an adjudication of forfeiture under this Act, shall extend to all property and effects of or to which the offender shall have been possessed or entitled either at the time of committing the offence, or at the time of the conviction or of the adjudication of forfeiture, or at any intermediate time; and no sale, alienation or other disposition of such property, made subsequently to the commission of the offence or made at any time with the fraudulent intention of preventing a forfeiture, shall have any effect against the right of Government to the forfeiture: Provided that nothing in this section contained shall affect any transferee of any negotiable security who shall prove that he acquired the same in good faith and with due caution for valuable consideration.

Proviso.

Forfeiture of land voluntarily alienated before committing offence.

4. All immoveable property of the offender, which shall be alienated after the passing of this Act and before the commission of any offence specified in section 2, shall be forfeited in the same manner as if no such alienation had been made, unless the alienation be made in good faith and for valuable consideration, or unless the same shall have been made and registered more than three months before the commission of the offence.

Court may specify in conviction date of offence.

5. The Court, or other authority by which the offender shall be convicted or the forfeiture shall be adjudged, may specify in the conviction or adjudication the day on which the offence was committed, if it can be ascertained.

Matters proved by conviction or adjudication.

6. In any proceeding concerning property alleged to have been forfeited, the conviction shall be conclusive evidence that the offence was

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[1] These words and figures were substituted by the Amending Act, 1891 (12 of 1891), Genl. Acts, Vol. IV, for the words and figures "by this Act, or Act 11 of 1857, or Act 14 of 1857, or Act 16 of 1857." For the Indian Penal Code, Act 45 of 1860, *see infra*, and for the Indian Articles of War (Act 5 of 1869), Genl. Acts, Vol. II.

[2] *See* s. 11, *infra*.

committed, and (if the day be specified in such conviction) that the offence was committed on that day; if the day be not specified, the conviction shall be *primâ facie* evidence that the offence was committed on the day mentioned in the charge. In any such proceeding an adjudication of forfeiture under this Act shall be *primâ facie* evidence of the commission of the offence, and (if the day be specified in the adjudication) that the offence was committed on that day; if the day be not specified, the adjudication shall be *primâ facie* evidence that the offence was committed on the day mentioned in the charge. Any adjudication under this Act shall be filed with and may be proved in the same manner as the records of the principal Court of criminal jurisdiction of the district.

Procedure for recovery of forfeited property.

7. After the conviction or adjudication, the collector or other chief officer appointed by Government for the collection of revenue, or any other officer whom the Government may specially appoint, may seize and take possession of the forfeited property: if he require the assistance of a Court to enable him to obtain possession of any such property by reason of any dispute respecting the title to the same or for any other cause, the principal Civil Court of original jurisdiction of the district in which the property is situate may, upon the production of a certified copy of the conviction or adjudication, hear and determine in a summary manner upon petition any matter in dispute relating to such property. Any order which may be passed by the Court shall not be subject to appeal; but the party against whom the same may be given by any Court, other than one of Her Majesty's Supreme Courts of Judicature, shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order.

Forfeited property or the proceeds to be restored upon proof that escape was not for the purpose of evading justice.

8. In case any person whose property shall have been so adjudged to be forfeited shall within one year after the seizure of any part of his property as a forfeiture surrender himself, and shall upon trial before a competent Court be acquitted of the offence, his property or the proceeds thereof shall be restored upon proof, to the satisfaction of the Court, that he did not escape or keep out of the way for the purpose of evading justice.

9. [*Limitation of suits and proceedings.*] *Rep. by the Indian Limitation Act, 1871 (IX of 1871).*

Power to secure property before forfeiture in certain cases.

10. In case it shall appear to a Magistrate that there is reasonable ground to suppose that any person is guilty of any offence specified in section 2 of this Act, and that any property liable to forfeiture for the offence is likely to be made away with, it shall be lawful for the Magistrate to attach such property and secure the same until the trial of the offender or until an enquiry for the purpose of adjudication under this Act shall be had.

Interpretation-clause.

11. The word "Magistrate" in this Act shall include any officer competent to commit for trial for any offence specified in section 2 of this Act.

ACT No. XXVII OF 1857 [1].

[*5th September, 1857.*]

An Act to establish and incorporate an University at Madras.

Preamble.

WHEREAS, for the better encouragement of Her Majesty's subjects of all classes and denominations within the Presidency of Fort St. George and other parts of India in the pursuit of a regular and liberal course of education, it has been determined to establish an University at Madras for the purpose of ascertaining, by means of examination, the persons who have acquired proficiency in different branches of Literature, Science and Art, and of rewarding them by Academical Degrees [2] as evidence of their respective attainments, and marks of honour proportioned thereunto; and whereas, for effectuating the purposes aforesaid, it is expedient that such University should be incorporated; It is enacted as follows [3] * * *:—

Incorporation.

1. The following persons, namely,—

The Right Honourable GEORGE FRANCIS ROBERT, LORD HARRISS, Governor of Fort St. George,

The Honourable SIR CHRISTOPHER RAWLINSON, Knight, Chief Justice of the Supreme Court of Judicature at Madras,

The Right Reverend THOMAS DEALTRY, Doctor of Divinity, Bishop of Madras, *ex officio*,

The Honourable SIR PATRICK GRANT, Lieutenant-General, Knight Commander of the Most Honourable Order of the Bath, Commander-in-Chief of the Forces in Madras, *ex officio*,

The Honourable WALTER ELLIOT, Member of the Council of Madras, *ex officio*,

The Honourable SIR HENRY CONYNGHAM MONTGOMERY, Baronet, Member of the Council of Madras, *ex officio*,

ALEXANDER JOHN ARBUTHNOT, Esquire, Director of Public Instruction, *ex officio*,

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[1] Short title, "The Madras University Act, 1857." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

[2] For powers conferring Degrees, *see* the Indian Universities Act, 1904 (8 of 1904), Genl. Acts, Vol. VI.

[3] The words and parentheses "(that is to say)" were repealed by the Repealing Act, 1876 (12 of 1876).

EYRE BURTON POWELL, Esquire,
Principal of the Presidency College, *ex officio*,

HENRY FORTEY, Esquire,
Acting Principal of the Presidency College, *ex officio*,

JAMES KELLIE, Esquire,
President of the Medical College Council, *ex officio*,

The Honourable SIR HENRY DAVISON, Knight,
Puisne Judge of the Supreme Court of Judicature at Madras,

THOMAS PYCROFT, Esquire,
Chief Secretary to Government,

EDWARD MALTBY, Esquire,
Acting Chief Secretary to Government,

JAMES DEWAR BOURDILLON, Esquire,
Secretary to Government,

HENRY FORBES, Esquire,
Acting Secretary to Government,

Colonel CHARLES ALFRED BROWN,
Secretary to Government,

JAMES BLAIR PRESTON, Esquire,
Physician General,

The Reverend ROBERT HALLEY, Master of Arts,
Principal of the Doveton College,

J.TOWNSHEND FOWLER, Esquire,
Principal of the Government Normal School,

P. SOOBROYOOLOO NAIDOO,
President of Patcheapah's Institution,

WILLIAM AMBROSE MOREHEAD, Esquire,
Provisional Member of the Council of Madras,

GUY LUSHINGTON PRENDERGAST, Esquire,
Accountant-General,

Colonel ARTHUR THOMAS COTTON,
Commandant of Engineers.

Colonel CHARLES EDWARD FABER,
Chief Engineer in the Department of Public Works,

Lieutenant-Colonel THOMAS TOWNSEND PEARS, Companion of the Most Honourable Order of the Bath,
Consulting Engineer for Railways,

Lieutenant-Colonel GEORGE BALFOUR, Companion of the Most Honourable Order of the Bath,

The Reverend JOHN RICHARDS, Master of Arts,

Lieutenant-Colonel FREDERICK CONYERS COTTON,
Acting Mint Master,

CHITTUR RUNGANADUM SASTRY,
Head Interpreter in the Supreme Court of Judicature,

JOHN EMELIUS MAYER, Esquire,
Professor of Chemistry and Pharmacy in the Madras Medical College,

The Reverend ROBERT KERR HAMILTON, Master of Arts,

The Reverend GEORGE HALL, Master of Arts,

The Reverend PETER SORENSON ROYSTON, Bachelor of Arts,

JAMES SANDERSON, Esquire,
Surgeon in the Madras Army,

The Reverend JOHN BRAIDWOOD, Master of Arts,

JOHN DAWSON MAYNE, Bachelor of Arts,
Professor of Law, Moral and Mental Philosophy, and Logic, in the Presidency College,

RICHARD BURGASS, Esquire, Master of Arts,
First Judge of the Court of Small Causes.

Lieutenant-Colonel JOHN JOSEPH LOSH, Military Auditor-General,

WILLIAM JUDSON VANSOMEREN, Esquire, Doctor in Medicine, Professor of Anatomy and Physiology in the Madras Medical College,

SAMUEL JESUDASEN, Native Surgeon,

Major JOHN MAITLAND, Superintendent, Gun-carriage manufactory,

The Reverend A. BURGESS,

The Reverend W. GRANT,

being the first Chancellor, Vice-Chancellor and Fellows of the said University, and all the persons who may hereafter become or be appointed to be Chancellor, Vice-Chancellor or Fellows as hereinafter mentioned, so long as they shall continue to be such Chancellor, Vice-Chancellor or Fellows, are hereby constituted and declared to be one Body Politic and Corporate by the name of the University of Madras;

and such Body Politic shall by such name have perpetual succession, and shall have a common seal, and by such name shall sue and be sued, implead and be impleaded, and answer and be answered unto, in every Court of Justice within the territories [1] * * * * and under the Government of [1] * * India [1] *

Power to hold and dispose of property.

2. The [2] * Body Corporate shall be able and capable in law to take, purchase and hold any property, moveable or immoveable, which may become vested in it for the purposes of the [2] * University by virtue of any purchase, grant, testamentary disposition or otherwise; and shall be able and capable in law to grant, demise, alien or otherwise dispose of, all or any of the property, moveable or immoveable, belonging to the [2] * University; and also to do all other matters incidental or appertaining to a Body Corporate.

3.[2] [*Constitution of Body Corporate.*] *Rep. by s. 29, Indian Universities Act, 1904 (8 of 1904).*

Office vacated by leaving India.

[2] * *. If any person being Chancellor, Vice-Chancellor or Fellow of the said University, shall leave India without the intention of returning thereto, his office shall thereupon become vacant.

Chancellor.

4. The Governor of Fort St. George for the time being shall be the Chancellor of the said University[3] * * * * * * *

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[1] The words " in the possession," the words " the East " and the word " Company " were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[2] The word " said " wherever it occurred in s. 2 and the words " Provided that " in s. 3 were repealed by s. 29 of the Indian Universities Act, 1904 (8 of 1904), Genl. Acts, Vol. VI.

[3] The words " and the first Chancellor shall be the Right Honourable George Francis Robert, Lord Harriss " in s. 4 were repealed by the Repealing Act, 1876 (12 of 1876).

Vice-Chancellor.

5.[1] * * * *. The office of Vice-Chancellor shall be held for two years only; [2] * * * * * *

Whenever a vacancy shall occur in the office of Vice-Chancellor of the said University by death, resignation, departure from India, effluxion of time or otherwise, the Governor of Fort St. George in Council shall, by notification in the Fort St. George Gazette, nominate a fit and proper person, being one of the Fellows of the said University, to be Vice-Chancellor in the room of the person occasioning such vacancy:

Provided that, on any vacancy in the said office which shall occur by effluxion of time, the Governor of Fort St. George in Council shall have power to re-appoint [2] * * * * * * * any future Vice-Chancellor to such office.

6. [*Fellows.*] *Rep. by s. 29 of the Indian Universities Act, 1904 (8 of 1904.)*

The appointment of a Fellow may be cancelled.

7. The Governor of Fort St. George in Council may cancel the appointment of any person already appointed or hereafter to be appointed a Fellow of the University, and, as soon as such order is notified in the Gazette, the person so appointed shall cease to be a Fellow.

Chancellor, Vice-Chancellor and Fellows to superintend the affairs of the University.

8. The Chancellor, Vice-Chancellor and Fellows for the time being, shall have the entire management of and superintendence over the affairs, concerns and property of the said University; and, in all cases unprovided for by this Act, it shall be lawful for the Chancellor, Vice-Chancellor and Fellows to act in such manner as shall appear to them best calculated to promote the purposes intended by the said University.

[3] * * * * * * * * * * *

9. [*Meetings of the Senate.*] *Rep. s. 29, Indian Universities Act, 1904 (8 of 1904).*

10. [*Appointment and removal of Examiners and Officers.*] *Rep. s. 29, Indian Universities Act, 1904 (8 of 1904).*

11. [*Power to confer degrees.*] *Rep. s. 29, Indian Universities Act, 1904 (8 of 1904).*

12. [*Qualification for admission of candidates for degrees.*] *Rep. s. 29, Indian Universities Act, 1904 (8 of 1904).*

13. [*Examination for degrees.*] *Rep. s. 29, Indian Universities Act, 1904 (8 of 1904).*

14. [*Grant of degrees.*] *Rep. s. 29, Indian Universities Act, 1904 (8 of 1904).*

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[1] The words "The first Vice-Chancellor of the said University shall be Sir Christopher Rawlinson, Knight" in s. 5 were repealed by the Repealing Act, 1876 (12 of 1876).

[2] The words "and the Vice-Chancellor hereinbefore nominated shall go out of office on the first day of January, 1859" in s. 5 and "the Vice-Chancellor hereinbefore nominated or" in the proviso to s. 5 were repealed by the Repealing Act, 1876 (12 of 1876).

[3] The last two paras. and the proviso to s. 8 relating to Bye-laws were repealed by s. 29 of the Indian Universities Act, 1904 (8 of 1904), Genl. Acts, Vol. VI.

Fees. **15.** The said Chancellor, Vice-Chancellor and Fellows shall have power to charge such reasonable fees for the degrees to be conferred by them, and upon admission into the said University, and for continuance therein, as they, with the approbation of the Governor of Fort St. George in Council, shall from time to time see fit to impose.

Annual accounts. Such fees shall be carried to one General Fee Fund for the payment of expenses of the said University under the directions and regulations of the Governor of Fort St. George in Council, to whom the accounts of income and expenditure of the said University shall once in every year be submitted for such examination and audit as the said Governor of Fort St. George in Council may direct.

ACT No. III of 1858 [1].

[*23rd January, 1858.*]

An Act to amend the Law relating to the arrest and detention of State Prisoners.

Preamble. WHEREAS doubts have been entertained whether State prisoners confined under Regulation II, 1819, of the Madras Code, or Regulation Mad. Reg. II of 1819.

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[1] Short title "The State Prisoners Act, 1858." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

Persons detained under this Act or under the Bengal State Prisoners Regulation, 1818 (3 of 1818), Ben. Code, Vol. IV, Madras Regulation II of 1819, Mad. Code, Vol. I, Bombay Regulation 25 of 1827, Bom. Code, Vol. I, or under the State Prisoners Act, 1850 (34 of 1850), *supra*, are not affected by s. 491 of the Code of Criminal Procedure, 1898 (Act 5 of 1898)—*see* last clause of s. 491 of the Code, Genl. Acts, Vol. V.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by s. 3 of the Laws Local Extent Act, 1874 (15 of 1874), Genl. Acts, Vol. II.

It has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), Ben. Code, Vol. I, and in the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (1 of 1900), E. B. & A. Code, Vol. I.

Section 5 has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s. 4 (*1*), Bur. Code; in the Angul District by the Angul District Regulation, 1894 (1 of 1894), s. 3, Ben. Code, Vol. I; in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (1 of 1890), s. 3; and in the Agency territories by the Baluchistan Agency Laws Law, 1890, Bal. Code.

Ss. 2 and 5 have been declared in force in the Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (9 of 1874), s. 5, Bur. Code.

The Act has been declared by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely:—

Sindh	*See* Gazette of India,	1880, Pt. I, p. 672.
Aden	Ditto	1879, Pt. I, p. 434.
West Jalpáiguri and the Western Duárs	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum	Ditto	1881, Pt. I, p. 504.

Bom. Reg. XXV of 1827.

XXV, 1827, of the Bombay Code, can be lawfully detained in any fortress, jail or other place within the local limits of the jurisdiction of the Supreme Courts of Judicature at Madras and Bombay, respectively; and it is expedient that such doubts be removed, and that the powers of the said Regulations and of Regulation III, 1818, of the Bengal Code be extended; It is enacted as follows:— Ben. Reg of 1818.

1. [*Repeal of part of section 1, clause first of Bombay Regulation XXV of 1827.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

Regulations as to arrest and confinement of State Prisoners in force within Presidency-towns.

2. The provisions of Regulation III, 1818, of the Bengal Code, Regulation II, 1819, of the Madras Code, and Regulation XXV, 1827, of the Bombay Code as altered by section 1 of this Act, relating to the arrest and confinement of persons as State prisoners, shall be in force within the local limits of the jurisdiction of the Supreme Courts of Judicature at Calcutta, Madras and Bombay, respectively.

Powers of Governors of Madras and Bombay as to custody of State prisoners.

3. All powers for the better custody of State prisoners which by virtue of [1]Act XXXIV of 1850 are vested in the Governor General in Council, shall be possessed and may be exercised by the Governor in Council of Fort St. George and the Governor in Council of Bombay respectively, for the better custody of State prisoners arrested within their respective presidencies. XXXIV 1850.

The Scheduled portion of the Mirzápur District . . .	*See* Gazette of India,	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application has been barred to that portion of the Hazára District known as Upper Tanawal by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N.-W. Code*). *See* Gazette of India,		1886, Pt. I, p. 48.
The District of Lahaul . .	*See* Gazette of India,	1886, Pt. I, p. 301.
The Scheduled Districts of the Central Provinces . . .	Ditto	1879, Pt. I, p. 771.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The Districts of Kámrup, Darrang, Nowgong, Sibságar, Lakhimpur, Gáro Hills, Khási and Jaintiá Hills, Cachar and Goálpára . .	Ditto	1887, Pt. I, p. 78.
The Mokokchang sub-division of the Nága Hills District .	Ditto	1891, Pt. I, p. 252.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

Kumáon and Garhwál . . .	*See* Gazette of India,	1876, Pt. I, p. 605.
The Tarái of the Province of Agra	Ditto	1876, Pt. I, p. 505.

It has been extended to the Shan States generally by the Shan States Laws and Criminal Justice Order, 1895, Schedule II. *See* Burma Gazette, 1895, Pt. I, p. 262, and Bur. Code, Appendix.

[1] *Supra.*

4. [*Arrests, etc., made before the passing of this Act legalized.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

5. The Governor General in Council may order the removal of any State prisoner, confined under the provisions of any of the said Regulations as amended and extended by this Act, from any fortress, jail or place in which he may be confined within either of the said presidencies, to any other fortress, jail or place of confinement within the territories [1] * * * * under the government of [1] * * India [1] * .

Removal of State prisoners from one place of confinement to another.

ACT XXXIV OF 1858 [2].

[*14th September, 1858.*]

An Act to regulate proceedings in Lunacy in the Courts of Judicature established by Royal Charter.

Preamble.

WHEREAS the several Courts of Judicature established by Royal Charters within the British territories in India are authorized and empowered by their respective Charters to appoint guardians and keepers of the persons and estates of lunatics, and to enquire into, hear and determine questions of alleged lunacy by inspection of the person or by such other ways and means by which the truth may best be discovered and known; and whereas, according to the practice of the said Courts, questions of alleged lunacy are determined by inquisition taken before a jury, and it is expedient to lessen the cost and to alter the mode of enquiry into such questions, and also to empower the said Courts to make provision for the due management of the estates of lunatics; It is enacted as follows:—

Court may order enquiry as to persons alleged to be insane.

Order may direct enquiry concerning property, etc., of lunatic.

1. It shall be lawful for any of the said Courts of Judicature, on such application as is hereinafter mentioned, to make an order directing an enquiry whether any person subject to the jurisdiction of the Court, who is alleged to be a lunatic, is or is not of unsound mind and incapable of managing himself and his affairs. The order may also contain directions for other enquiries concerning the nature of the property belonging to the alleged lunatic, the persons who are his relatives or next-of-kin, the time during which he has been of unsound mind, or such other matters as to the Court shall seem proper.

Application by whom to be made.

2. Application for such enquiry may be made by any persons related by blood or marriage to the alleged lunatic, or by the Advocate-General.

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[1] The words "in the possession and," "the East" and the word "Company" were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[2] Short title, "The Lunacy (Supreme Courts) Act, 1858." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act is based, to some extent, on 16 & 17 Vict., c. 70 (The Lunacy Regulation Act, 1853).

Ordinarily, enquiry to be by the Court. Enquiry by Judge in chambers.

3. The order made by the Court upon such application shall direct the enquiry to be by the Court itself. It shall nevertheless be lawful for the Court, if it see sufficient cause for so doing, to direct the enquiry to be executed in chambers before a single Judge of the Court.

Notice of enquiry to be given to lunatic.

Reasonable notice of the time and place appointed for the enquiry shall be given to the alleged lunatic. If it shall appear that the alleged lunatic is in such a state that personal service on him would be ineffectual, the Court may direct such substituted service of the notice as it shall think proper. The Court may also, if it think fit, direct a copy of such notice to be served upon any person related by blood or marriage to the alleged lunatic.

Service of notice.

Lunatic may demand enquiry before full Court.

If the enquiry be directed to be executed before a single Judge, it shall be lawful for the alleged lunatic, at any time before the day fixed for the enquiry, to demand an enquiry before the full Court. In such case the enquiry shall be by the Court, and a further day shall be appointed for making such enquiry; and in such case the Court may direct such further notices (if any) to be given as it may think requisite.

Power to require attendance of lunatic for the purpose of being personally examined.

4. The Court may, at any time after the application, require the alleged lunatic to attend at such convenient time and place, within twenty miles of the place of residence of the said lunatic, as it may appoint for the purpose of being personally examined by the Court or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic.

Power to authorize persons to have access to lunatic.

5. The Court may likewise, at any time after the application for such enquiry, make an order authorizing any person or persons to be therein named, to have access to the alleged lunatic for the purpose of a personal examination.

Rules respecting attendance and examination where lunatic is a woman of rank.

6. The attendance and examination of the alleged lunatic under the provisions of the two last preceding sections shall, if the alleged lunatic be a woman who, according to the custom and manners of the country, ought not to be compelled to appear in public, be regulated by the rules in force for the examination of such persons in other cases.

Powers of Judge executing the enquiry.

7. If the enquiry is made by a Judge of the Court, the Judge executing the enquiry shall, while so employed, have power (subject to the provisions of the last preceding section) personally to examine the alleged lunatic and take such evidence, on oath or otherwise, and call for such information as he may think fit or the said Court may direct in order to ascertain whether the alleged lunatic is or is not of unsound mind, and shall have the like powers and authority as are or may be vested by law in a Judge or Master of the said Court for the investigation of matters referred to them by the Court.

Judge to report.

The Judge shall report to the Court the result of the enquiry.

Power to direct enquiry

8. If the alleged lunatic be not within the local limits of the jurisdiction of the Court, and the enquiry cannot conveniently be made in

either of the modes hereinbefore provided, the Court may direct the enquiry to be made before any principal Court of original jurisdiction in civil cases within whose local jurisdiction the alleged lunatic may be; and such last-mentioned Court shall accordingly proceed to make such enquiry in the same manner as if the alleged lunatic were subject to its jurisdiction and shall certify its finding upon the matters of enquiry to the Court directing the enquiry.

by principal Civil Court of original jurisdiction within whose local jurisdiction lunatic may be.

The evidence taken upon the enquiry shall be recorded by the Court in the English language in the form of a narrative, and a copy thereof, certified by the Court, shall be transmitted, together with any remarks the Court may think fit to make thereon, to the Court by which the enquiry was directed.

9. If the report of the Judge or the finding of a Court under the last preceding section appear to the Court directing the enquiry to be defective or insufficient in point of form, it shall be lawful for such last-mentioned Court either to amend the same, or to refer it back to the Judge or the Court which made the enquiry to be amended.

Power to amend report of Judge or finding of Court.

10. It shall be lawful for the Court, on the application of the person at whose instance the order directing an enquiry was made or on the application of the alleged lunatic or of any of his relatives authorized by the Court to make the application, to direct a new trial of the matters of enquiry according to the usual course and practice of the Court in directing new trials in civil cases. If such application be granted in a case tried by a single Judge, the order granting the same shall direct the enquiry to be made by the full Court. If the application be granted in a case tried under section 8, the Court directing the new trial may give such directions regarding the same as it shall see fit.

Court may direct new trial.

11. The Court shall make such order as may appear just respecting the costs of any enquiry under this Act, and may include therein such remuneration to physicians and surgeons as the Court, having regard to the nature of the enquiry, shall deem reasonable.

Costs of enquiry.

12. If no new trial be directed, the finding of the Court to which the application for enquiry was made, if the enquiry have been made by such Court, or the report of the Judge, or the finding of the Court to which the enquiry may have been referred under the provisions of section 8, as the case may be, shall be of the same force and effect, and be proceeded on in the same manner in regard to the appointment of committees of the person and estate of the lunatic, as the inquisition now according to practice taken upon the oath of a jury.

Finding of Court or report by Judge to be proceeded on, in regard to appointment of committees, as an inquisition.

13. It shall be lawful for the Court, on the appointment of committees of the person and estate of the lunatic, to direct by the order of appointment, or by any subsequent order, that the person to whom the charge of the estate is committed shall have such powers for the management thereof as to the Court shall seem necessary and proper, reference

On appointment of committee, the Court may give certain powers for management

of lunatic's estate.

being had to the nature of the property, whether moveable or immoveable, of which the estate may consist. But such powers shall not extend to the sale or charge by way of mortgage of the estate or any part thereof, or to the letting of any immoveable property unless for a term not exceeding three years.

Master to receive proposals concerning management, sale, etc., of estate without an order of reference.

14. The Master of the Court shall be at liberty, without an order of reference, to receive any proposal and conduct any enquiry respecting the management of the estate of a lunatic if such proposal relate to any matter which the committee of the estate has not been empowered by an order under the last preceding section to dispose of. The Master may likewise, without reference, receive and enquire into any proposal relating to the sale or charge by way of mortgage of the estate or of any part thereof, or to the letting of any immoveable property for a term exceeding three years.

Court to make order upon the report of the Master.

15. The Master shall report to the Court on the proposal, and the Court shall, subject to the provisions of this Act, make such order upon the report and respecting the costs as shall, under the circumstances, seem just.

Master to determine what relative to attend proceedings, and appoint guardian of infant relative.

16. The Court or the Master shall once in the matter of each lunacy, and may afterwards from time to time, determine whether any one or more and (if any) how many and which of the relatives or next-of-kin shall attend before the Master, at the cost of the estate, in any proceeding connected with the management thereof; and, if any such relative or next-of-kin is an infant, may from time to time appoint a fit person to be his guardian for the purposes of the lunacy.

Court may make orders concerning matters connected with lunacy.

17. The Court may, on application made to it by petition concerning any matter whatsoever connected with the lunacy, make such order, subject to the provisions of this Act, respecting the application and the costs thereof, and of the consequent proceedings, as shall, under the circumstances, seem just.

Lunatic's property may be sold for debts, maintenance, etc.

18. The Court may, if it appears to be just, or for the lunatic's benefit, order that any property, moveable or immoveable, of the lunatic, and whether in possession, reversion, remainder, contingency or expectancy, be sold or charged by way of mortgage or otherwise disposed of, as may seem most expedient for the purpose of raising money to be applied for any of the following purposes:—

1. The payment of the lunatic's debts, including any debt incurred for his maintenance or otherwise for his benefit:
2. The discharge of any incumbrance on his estate:
3. The payment of or provision for the expenses of his future maintenance and the maintenance of his family, including the expenses of his removal to Europe, when he shall be so removed, and all expenses incidental thereto.

4. The payment of the costs of any enquiry under this Act, and of any costs incurred by order or under the authority of the Court.

Committee to execute Conveyances to execute powers.

19. The committee of the lunatic's estate shall, in the name and on behalf of the lunatic, execute all such conveyances and instruments of transfer relative to any sale, mortgage or other disposition of his estate as the Court shall order. In like manner such committee shall, under the order of the Court, exercise all powers whatsoever vested in a lunatic, whether the same are vested in him for his own benefit or in the character of trustee or guardian.

Court may order performance of contract.

20. Where a person having contracted to sell or otherwise dispose of his estate or any part thereof, afterwards becomes lunatic, the Court may, if the contract is such as the Court thinks ought to be performed, direct the committee of the estate to execute such conveyances and to do such other acts in fulfilment of the contract as it shall think proper.

Partner found lunatic.

21. If a member of a partnership firm be found lunatic, the Court may, on the application of the other partners, or of any person who appears to the Court to be entitled to require the same, dissolve the partnership; and thereupon or upon a dissolution by decree of Court or otherwise by due course of law, the committee of the estate may, in the name and on behalf of the lunatic, join with the other partners in disposing of the partnership property upon such terms, and shall do all such acts for carrying into effect the dissolution of the partnership as the Court shall think proper.

Disposal of business premises.

22. Where a lunatic has been engaged in business, the Court may, if it appear to be for the lunatic's benefit that the business premises should be disposed of, order the committee of the estate to sell and dispose of the same; and the moneys arising from such sale shall be applied in such manner as the Court shall direct.

Committee may dispose of lease.

23. Where a lunatic is entitled to a lease or under-lease, and it appears to be for the benefit of his estate that it should be disposed of, the committee of the estate may, by order of the Court, surrender, assign or otherwise dispose of the same to such person for such valuable or nominal consideration, and upon such terms, as the Court shall think fit.

When Court of Wards may assume charge of Lunatic's land.

24. If a lunatic is possessed of any landed property situate beyond the local limits of the jurisdiction of the Court, which, by the law in force in the presidency wherein such land is situated, subjects the proprietor, if disqualified, to the superintendent of the Court of Wards, the said Court of Wards may assume the charge of such landed property, and manage the same according to the rules for the time being in force for such management:

Proviso.

Provided that, in such case, no further proceedings in respect of the lunacy shall be taken under any such law, nor shall it be competent to the Court of Wards or to any collector to appoint a guardian of the person of the said lunatic or a manager of the estate except of the landed property which so subjects the proprietor as aforesaid:

Disposal of surplus income of land.

Provided also that the surplus of the income of such landed property, after providing for the discharge of the Government revenue and expenses of management shall be disposed of from time to time in such manner as the Supreme Court shall direct, and not otherwise:

This section not to affect certain powers given to Supreme Court by ss. 18, 19 and 20.

Provided further that nothing contained in this section shall affect the powers given to the Supreme Court by sections 18, 19 and 20 of this Act or (except so far as relates to the management of the said landed property which so subjects the proprietor as aforesaid) the powers given by any other section of this Act.

Stock transferable in India, belonging to lunatic, may be ordered to be transferred.

25. Where any stock or Government securities or any share in a Company (transferable within the said territories or the dividends of which are payable there) is standing in the name of, or is vested in, a lunatic, beneficially entitled thereto, or in a committee of the estate of a lunatic, or in a trustee for him, and the committee dies intestate, or himself becomes lunatic, or is out of the jurisdiction of the Court, or it is uncertain whether the committee be living or dead, or he neglects or refuses to transfer the stock, securities or shares, or to receive and pay the dividends to a new committee or as he directs, within fourteen days after being required by him to do so, then the Court may order some fit person to make such transfer, or to transfer the same, and to receive and pay over the dividends in such manner as the Court may direct, and such transfer or payment shall be valid and effectual for all purposes.

Stock of lunatic residing out of India, and not within the United Kingdom, may be ordered to be transferred.

26. Where any such stock or Government securities or share in a company is standing in the name of, or vested in, any person residing out of the said territories, and not in any part of the United Kingdom, the Court, upon being satisfied that such person has been declared of unsound mind, and that his personal estate has been vested in a curator or manager, according to the laws of the place where he is residing, may order some fit person to make such transfer of the stock, securities or shares, or of any part thereof, to such curator or manager or otherwise, and also to receive and pay over the dividends and proceeds, as the Court may think fit; and any act done in pursuance of such order shall be valid and effectual for all purposes.

Power to apply property for lunatic's maintenance without

27. If it appears to the Court, having regard to the situation and condition in life of the lunatic and his family and the other circumstances of the case, to be expedient that his property should be made available for his or their maintenance in a direct and inexpensive man-

ner, it may, instead of appointing a committee of the estate, order that the property if money, or if of any other description, the produce thereof, when realized, be paid to such person as the Court may think fit, to be applied for the purpose aforesaid; and all payments so made shall be a good discharge to the person making the same. appointing committee.

28. If it appears to the Court that the unsoundness of mind of a lunatic is in its nature temporary, and that it is expedient to make temporary provision for his maintenance or for the maintenance of his family, the Court may, in like manner as under the last preceding section, direct his property or a sufficient part of it to be applied for the purpose aforesaid. Like power in case of temporary lunacy.

29. When any person has been found of unsound mind, and it shall be shown to the Court, either on the application of such person or of any other person acting on his behalf, or on the information of any other person, that there is reason to believe that such unsoundness of mind has ceased, the Court may make an order for enquiry whether such person is or is not still of unsound mind and incapable of managing himself and his affairs. Proceedings in lunacy to cease or be set aside if Court find that the unsoundness of mind has ceased.

The enquiry shall be conducted in the same manner and subject to the same rules as are hereinbefore prescribed for an enquiry into the unsoundness of mind of an alleged lunatic; and, if it be found that the unsoundness of mind has ceased, the Court shall order all proceedings in the matter of the lunacy to cease or to be set aside on such terms and conditions as under the circumstances of the case shall appear proper.

30. The Court may, from time to time, make such orders, not inconsistent with the provisions of this Act, as shall seem meet for carrying into effect the purposes of this Act, and for regulating the mode of proceeding before the Court, or before a Judge of the Court, or the Master, in matters of lunacy. Power to make general orders.

31. Every power given by this Act to the Master of any of the said Courts may also be exercised by a Judge of any of the said Courts.[1] * * * * * * * * * * Powers of Master exerciseable by Judge.

32. Unless the contrary appears from the context, the word "lunatic," as used in this Act, shall mean any person found by due course of law to be of unsound mind and incapable of managing his affairs. Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular. Words importing the masculine gender shall include females. Interpretation-clause.

[1] The words " and shall in the Court of Judicature of Prince of Wales' Island, Singapore and Malacca be exercised by the Recorder of the said Court or of any division thereof," were repealed by the Repealing Act, 1874 (16 of 1874).

ACT No. XXXV OF 1858 [1].

[*14th September, 1858.*]

An Act to make better provision for the care of the Estates of Lunatics not subject to the jurisdiction of the Supreme Courts of Judicature.

Preamble. WHEREAS it is expedient to make better provision for the care of the

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[1] Short title, "The Lunacy (District Courts) Act, 1858." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by s. 3 of the Laws Local Extent Act, 1874 (15 of 1874), Genl. Acts, Vol. II.

It has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s. 4 (*1*) and Sch. I, Bur. Code; in the Arakan Hill District, with a modification, by the Arakan Hill District Laws Regulation, 1874 (9 of 1874), s. 3, Bur. Code; in British Baluchistan, by the British Baluchistan Laws Regulation, 1890 (1 of 1890), s. 3, and in the Agency Territories by the Baluchistan Agency Laws Law, 1890, Bal Code, and in the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), Ben. Code, Vol. I.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India, 1880, Pt. I, p. 672.	
West Jalpáiguri and the Western Dvárs	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum .	Ditto	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzápur District . . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application has been barred to that portion of the Hazára District known as Upper Tanawal by the Hazára (Upper Tanawal) Regulation (2 of 1900. s. 3), Punjab and N.-W. Code*). *See* Gazette of India, 1886, Pt. I, p. 48.		
The District of Lahaul . .	*See* Gazette of India, 1886, Pt. I, p. 301.	
The Scheduled Districts of the Central Provinces . . .	Ditto	1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam .	Ditto	1898, Pt. I, p. 870.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The Districts of Kámrup, Naugong, Darrang, Sibságar, Lakhimpur, Goálpára (excluding the Eastern Dvárs) and Cachar (excluding the North Cachar Hills) . .	Ditto	1878, Pt. I, p. 533.
The Porahat Estate in the Singbhum District . . .	Ditto	1897, Pt. I, p. 1059.

estates of lunatics not subject to the jurisdiction of the Supreme Courts of Judicature; and to prescribe general rules by which the state of mind of persons not subject to such jurisdiction, who are alleged to be lunatic, may be enquired into and ascertain; It is enacted as follows:—

1. [*Repeals.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

Power to institute enquiry when possessor of property is alleged to be lunatic.

2. Whenever any person not subject to the jurisdiction of the Supreme Courts, who is possessed of property, is alleged to be a lunatic, the Civil Court, within whose jurisdiction such person is residing, may, upon such application as is hereinafter mentioned, institute an enquiry for the purpose of ascertaining whether such person is or is not of unsound mind and incapable of managing his affairs.

Who may apply for enquiry.

3. Application for such enquiry may be made by any relative of the alleged lunatic or by any public curator appointed under Act XIX of 1841 [1], or by the Government pleader, or, if the property of the alleged lunatic consist in whole or in part of land or any interest in land, by the Collector of the district in which it is situate.

If the property or any part thereof be of such a description as by the law in force in any presidency where such property is situate would subject the proprietor, if disqualified, to the superintendence of the Court of Wards, the application may be made by the Collector on behalf of the Court of Wards.

Notice of enquiry be given to lunatic.

4. When the Civil Court is about to institute any such enquiry as aforesaid, it shall cause notice to be given to the alleged lunatic of the time and place at which it is proposed to hold the enquiry. If it shall appear that the alleged lunatic is in such a state that personal service on him would be ineffectual, the Court may direct such substituted service of the notice as it shall think proper. The Court may also direct a copy of such notice to be served upon any relative of the alleged lunatic.

Service of notice.

Power to require attendance of lunatic.

5. The Civil Court may require the alleged lunatic to attend at such convenient time and place as it may appoint for the purpose of being personally examined by the Court or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic.

Power to authorize access to lunatic.

The Court may likewise make an order authorizing any person or persons therein named to have access to the alleged lunatic for the purpose of a personal examination.

Rules respecting attendance and

6. The attendance and examination of the alleged lunatic under the provisions of the last preceding section shall, if the alleged lunatic be

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It has also been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—

Kumáon and Garhwál . .	*See* Gazette of India,	1876, Pt. I, p. 606.
The Tarái of the Province of Agra	Ditto	1876, Pt. I, p. 505.
Ajmer and Merwára . .	Ditto	1878, Pt. I, p. 380.
The District of Coorg . .	Ditto	1906, Pt. I, p. 190.

[1] *Supra.*

examination where lunatic is a woman of rank.

a woman who, according to the manners and customs of the country, ought not to be compelled to appear in public, be regulated by the rules in force for the examination of such persons in other cases.

Appointment of assessors.

7. The Civil Court, if it think fit, may appoint two or more persons to act as assessors to the Court in the said enquiry.

Order of Court.

Upon the completion of the enquiry, the Court shall determine whether the alleged lunatic is or is not of unsound mind, and may make such order as to the payment of the costs of the enquiry by the person upon whose application it was made, or out of the estate of the alleged lunatic if he be adjudged to be of unsound mind, or otherwise, as it may think proper.

Issue of commission to subordinate Court.

8. If the alleged lunatic reside at a distance of more than fifty miles from the place where the Civil Court to which the application shall have been made is held, the said Court may issue a commission to any subordinate Court to make the enquiry; and thereupon the said subordinate Court shall conduct the enquiry in the manner hereinbefore provided.

Report of subordinate Court.

Order of Civil Court.

On the completion of the enquiry the subordinate Court shall report its proceedings with the opinions of the assessors, if assessors have been appointed, and its own opinion on the case; and thereupon the Civil Court shall make such order in the case as it may think proper.

Management of lunatic's estate, if consisting of property subject to Court of Wards.

9. When a person has been adjudged to be of unsound mind and incapable of managing his affairs, if the estate of such person or any part thereof consist of property which by the law in force in any presidency subjects the proprietor, if disqualified, to the superintendence of the Court of Wards, the Court of Wards shall be authorized to take charge of the same.

Manager in other cases.

In all other cases, except as otherwise hereinafter provided, the Civil Court shall appoint a manager of the estate. Any near relative of the lunatic, or the public curator, or, if there be no public curator, any other suitable person, may be appointed manager.

Appointment of guardian by Civil Court.

10. Whenever a manager of the estate of a lunatic is appointed by the Civil Court, the Court shall appoint a fit person to be guardian of the person of the lunatic. The manager, unless he be the public curator, may be appointed guardian: Provided always that the legal heir of the lunatic shall not in any case be appointed guardian of his person.

Charge of lunatic's estate if consisting of land not subject to Court of Wards.

11. [1] If the estate consist in whole or in part of land or any interest in land not subject to the jurisdiction of the Court of Wards, the Civil Court, instead of appointing a manager, may direct the Collector to take charge of the estate; and thereupon the Collector shall appoint a manager of the property and a guardian of the person of the lunatic.

[1] Section 11 has been repealed in the Lower Provinces of Bengal by the Bengal Court of Wards Act, 1879 (Ben. Act 9 of 1879), s. 2, Ben. Code, Vol. I.

All the proceedings of the Collector in the charge of estates under this Act shall be subject to the control of the superior Revenue-authorities. Control of Collector's proceedings.

[1]**12.** If the person appointed to be manager of the estate of a lunatic, or the person appointed to be guardian of a lunatic's person, shall be unwilling to discharge the trust gratuitously, the Court or the Collector, as the case may be, may fix such allowance or allowances to be paid out of the estate of the lunatic as, under the circumstances of the case, may be thought suitable. Remuneration of managers and guardians.

[1]**13.** The person appointed to be guardian of a lunatic's person shall have the care of his person and maintenance. When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as shall be fixed by the Court or the Collector, as the case may be, for the maintenance of the lunatic and of his family. Duties of guardian.

[1]**14.** Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic, and may collect and pay all just claims, debts and liabilities due to or by the estate of the lunatic. But no such manager shall have power to sell or mortgage the estate or any part thereof, or to grant a lease of any immoveable property for any period exceeding five years, without an order of the Civil Court previously obtained. Powers of managers.

[1]**15.** Every person appointed by the Civil Court or by the Collector to be manager of the estate of a lunatic shall, within six months from the date of his appointment, deliver in Court or to the Collector, as the case may be, an inventory of the landed property belonging to the lunatic and of all such sums of money, goods and effects, as he shall receive on account of the estate, together with a statement of all debts due by or to the same. And every such manager shall furnish to the Court or to the Collector annually, within three months of the close of the year of the era current in the district, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate and the balance remaining in his hands. Managers to furnish inventory and annual accounts.

If any relative of the lunatic, or any public officer, by petition to the Court, shall impugn the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager and enquire summarily into the matter, and make such order thereon as it shall think proper, or the Court, at its discretion, may refer any such petition to any subordinate Court or to the Collector if the manager was appointed by the Collector. Proceeding if accuracy of inventory or accounts be impugned.

[1] Sections 12 to 19 (both inclusive) do not apply to persons or properties under the charge of the Court of Wards in the Lower Provinces of Bengal. *See* the Bengal Court of Wards Act, 1879 (Ben. Act 9 of 1879), s. 10, Ben. Code, Vol. I.

Manager to pay proceeds of estates into the public treasury.

[1]**16.** All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the lunatic or of the estate shall be paid into the public treasury on account of the estate, and may be invested from time to time in the public securities.

Relative may sue for an account.

[1]**17.** It shall be lawful for any relative of a lunatic to sue for an account from any manager appointed under this Act, or from any such person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

Removal of manager or guardian by Civil Court.

[1]**18.** The Civil Court for any sufficient cause may remove any manager appointed by the Court, not being a public curator, and may appoint such curator or any other fit person in his room, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all moneys received or disbursed by him. The Court may also, for any sufficient cause, remove any guardian appointed by the Court.

Removal by Collector.

In like manner the Collector, for any sufficient cause may remove any manager or guardian appointed by the Collector; and the Court, on the application of the Collector, shall compel any manager so removed to deliver his accounts and the property in his hands.

Manager refusing to furnish accounts may be fined by the Court, etc.

[1]**19.** The Civil Court may impose a fine not exceeding five hundred rupees on any manager of the estate of a lunatic who wilfully neglects or refuses to deliver his accounts or any property in his hands within the prescribed time or a time fixed by the Court, and may realize such fine by attachment and sale of his property under the rules in force for the execution of decrees of Court, and may also commit the recusant to close custody until he shall deliver such accounts or property.

When Court may apply property for lunatic's maintenance without appointing manager.

20. If it appears to the Civil Court, having regard to the situation and condition in life of the lunatic and his family, and the amount and description of his property, to be unnecessary to appoint a manager of the estate as hereinbefore provided, the Court may, instead of appointing such manager, order that the property, if money, or if of any other description the produce thereof, when realized, be paid to such person as the Court may think fit, to be applied for the maintenance of the lunatic and his family.

Court may institute enquiry to ascertain whether a person has ceased to be of unsound mind.

21. When any person has been adjudged to be of unsound mind and incapable of managing his affairs, if such person or any other person acting on his behalf or having or claiming any interest in respect of his estate shall represent by petition to the Civil Court or if the Court shall be informed in any other manner that the unsoundness of mind of such person has ceased, the Court may institute an enquiry for the purpose of ascertaining whether such person is or is not still of unsound mind and incapable of managing his affairs.

[1] *See* footnote on previous page.

The enquiry shall be conducted in the manner provided in section 4 and the four following sections of this Act, and if it be adjudged that such person has ceased to be of unsound mind and incapable of managing his affairs, the Court shall make an order for his estate to be delivered over to him, and such order shall be final. And may order estate to be restored.

22. Except as otherwise herein provided, all orders made by a Civil Court or by any subordinate Court under this Act shall be open to appeal under the rules in force for appeals in miscellaneous cases. Orders appealable.

23. The word "lunatic" as used in this Act, unless the contrary appears from the context, shall mean every person found by due course of law to be of unsound mind and incapable of managing his affairs. The expression "Civil Court" shall mean the principal Court of original jurisdiction in the district. Words importing the masculine gender shall include females. Interpretation-clause.

ACT XXXVI OF 1858.[1]

[*14th September, 1858.*]

An Act relating to Lunatic Asylums.

WHEREAS it is expedient to provide for the reception and detention Preamble.

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[1] Short title, "The Indian Lunatic Asylums Act, 1858." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act is founded to some extent on 16 & 17 Vict., c. 96 (Lunatics).

It has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by s. 3 of the Laws Local Extent Act, 1874 (15 of 1874), Genl. Acts, Vol. II.

It has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s. 4 (*l*), Bur. Code; in the Angul District by the Angul District Regulation, 1894 (1 of 1894), s. 3, Ben. Code, Vol. I; in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (1 of 1890), s. 3, and in t' e Agency Territories by the Baluchistan Agency Laws Law, 1890, Bal. Code; in the Arakan Hill District, by the Arakan Hill District Laws Regulation, 1874 (9 of 1874), s. 3, Bur. Code; in the Santhal Parganas by the Santhal Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899), Ben. Code, Vol. I.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India, 1878, Pt. I, p. 482.	
The Taluqs of Bhádrachálam and Rakapilli and the Rampa Country	Ditto,	1879, Pt. I, p. 630.
West Jalpaiguri, the Western Duárs, the Western Hills of Darjiling and the Damson Sub-division of the Darjiling District	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum .	Ditto	1881, Pt. I, p. 504.

of lunatics in asylums established for that purpose; It is enacted as follows:—

Lunatic asylums may be established by Government or may be licensed.

1. The Executive Government of any Presidency or place, with the sanction of the Governor General of India in Council, may establish asylums for the reception and detention of lunatics at such places within the limits of the said Government as may be deemed proper. Any such Executive Government may also, if it think fit, grant licenses to any private persons for the establishment of such asylums within the said limits, and may withdraw such licenses [1].

Rules for the management

2. The management of every lunatic asylum and the care and

The Porahat Estate in the Singbhum District . . .	*See* Gazette of India, 1897, Pt. I, p. 1059.	
The Scheduled portion of the Mirzápur District . . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application has been barred to that portion of the Hazára District known as Upper Tanawal by the Hazára (Upper Tanawal) Regulation (2 of 1900, s. 3), Punjab and N.-W. Code).* *See* Gazette of India, 1886, Pt. I, p. 48.		
The District of Lahaul . .	*See* Gazette of India, 1886, Pt. I, p. 301.	
The Scheduled Districts of the Central Provinces . . .	Ditto	1879, Pt. I, p. 771.
The District of Coorg . .	Ditto	1887, Pt. I, p. 505.
The Scheduled Districts in Ganjam and Vizagapatam .	Ditto	1898, Pt. I, p. 870.
The Districts of Kámrup, Naugong, Darrang, Sibságar, Lakhimpur, Goálpára (including the Eastern Dvárs) and Cachar (excluding the North Cachar Hills) . .	Ditto	1878, Pt. I, p. 533.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The Gáro Hills, the Khasi and Jaintiá Hills, the Nágá Hills, the North Kachar Hills in the Kachar District and the Eastern Dvárs in the Goálpára District . . .	Ditto	1897, Pt. I, p. 299.

It has been extended, by notification under s. 5 of the same Act, to the following Scheduled Districts, namely :—

Kumáon and Garhwál . .	*See* Gazette of India, 1876, Pt. I, p. 606.	
The Tarái of the Province of Agra	Ditto	1878 Pt. I, p. 505.
Ajmer and Merwára . .	Ditto	1878, Pt. I, p. 380.

[1] For instance of an order of the nature of that provided for by s. 1 and s. 4, see U. P. List of Loc. R. & O., Vol. I, Pt. I, List. 3.

custody of its inmates shall be regulated according to such [1] rules as shall from time to time be sanctioned by the Executive Government. The Executive Government shall appoint for every asylum not less than three visitors, one of whom at least shall be a Medical Officer. The Inspector of Jails (where such office exists) shall be a visitor *ex-officio* of all the asylums within the circle of his inspection.

of asylums to be sanctioned by Government. Appointment of visitors.

3. Two or more of the visitors, one of whom shall be a Medical Officer, shall, once at the least in every month, together inspect every part of the asylum or asylums of which they are visitors, and see and examine, as far as circumstances will permit, every lunatic therein, and the order and certificate for the admission of every lunatic admitted since the last visitation of the visitors; and shall enter in a book to be kept for that purpose any remarks which they may deem proper in regard to the management and condition of the asylum and the lunatics therein.

Monthly inspection by visitors.

4. It shall be the duty of every darogah or district police-officer to apprehend and send to the Magistrate all persons found wandering at large within his district who are deemed to be lunatics, and all persons believed to be dangerous by reason of lunacy.

Wandering and dangerous lunatics to be sent to the Magistrate.

Whenever any such person as aforesaid is brought before a Magistrate, the Magistrate, with the assistance of a Medical Officer, shall examine such person, and if the Medical Officer shall sign a certificate in the Form A in the Schedule to this Act, and the Magistrate shall be satisfied on personal examination or other proof that such person is a lunatic and a proper person to be detained under care and treatment, he shall make an order for such lunatic to be received into the asylum established [2] for the division in which the Magistrate's jurisdiction is situate, or, if such lunatic is not a native of the country and the circumstances of the case so require, into a lunatic asylum at the Presidency; and shall send the lunatic in suitable custody to the asylum mentioned in such order:

Certificate and order for reception in asylum.

Provided that, if any friend or relative of any lunatic, who is believed to be dangerous, shall undertake in writing to the satisfaction

In certain cases a lunatic may

[1] For rules made under this section for—
(1) Bengal, *see* Ben. Stat. R. & O., Vol. I, p. 2.
(2) Bombay, *see* Bom. R. & O., Vol. I, pp. 19-24.
(3) Burma, *see* Bur. R. Man. Vol. II, pp. 11 to 13 and Bur. Gaz., 1907, Pt. I, p. 215.
(4) Central Provinces, *see* the Cen. Prov. Gazette, 1904, Pt. III, p. 53.
(5) E. B. & Assam, *see* Assam List of Loc. R. & O., Ed. 1893, p. IV and p. 2 of Supplement to ditto and the Ben. Stat. R. & O., referred to in (1).
(6) Madras, *see* Mad. R. & O., Vol. I, p. 11.
(7) Panjab, *see* the Panj. List of Local R. & O., p. 6.
(8) United Provinces of Agra and Oudh, *see* the U. P. Gazette, 1890, Pt. I, p. 341.

For instances of orders issued under this section and section 1, for—
(1) Bombay, *see* Bom. R. & O., Vol. I.
(2) U. P., *see* U. P. List of Loc. R. & O., Vol. I, Pt. I, List 3.

be committed to the care of his friends or relatives.

of the Magistrate, that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or others, the Magistrate, instead of sending him to an asylum, may make him over to the care of such friend or relative:

or sent to a licensed asylum.

Provided also that, if any such friend or relative shall desire that the lunatic may be sent to a licensed asylum instead of the public asylum of the Division, and shall engage in writing to the satisfaction of the Magistrate to pay the expenses which may be incurred for the lodging, maintenance, medicine, clothing and care of the lunatic in such asylum, the Magistrate may send the lunatic to the licensed asylum mentioned in the engagement.

In case of neglect or cruel treatment of a lunatic, Magistrate may order relative, or person bound to maintain him, to provide for the proper treatment of such lunatic.

5. If it shall appear to the Magistrate, on the report of a police-officer or the information of any other person, that any person within the limits of his jurisdiction deemed to be a lunatic is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, the Magistrate may send for the supposed lunatic, and summon such relative or other person as has or ought to have the charge of him; and if such relative or other person be legally bound to maintain the supposed lunatic, the Magistrate may make an order for such lunatic being properly cared for and treated, and, if such relative or other person shall wilfully neglect to comply with the said order, may commit him to jail for a period not exceeding one month.

If no person bound to maintain him, Magistrate may make an order for his reception in asylum.

If there be no person legally bound to maintain the supposed lunatic, or if the Magistrate think fit so to do, he may proceed as prescribed in the last preceding section, and upon being satisfied in manner aforesaid that the person deemed to be a lunatic is a lunatic and a proper person to be detained under care and treatment, may make an order for his reception into such asylum as aforesaid.

Darogah to report neglect.

It shall be the duty of every darogah or district police-officer to report to the Magistrate every such case of neglect or cruel treatment as aforesaid which may come to his knowledge.

Commissioner of Police, etc., to act in the Presidency-towns and Straits Settlement.

6. All acts which the Magistrate is authorized or required to do by the two last preceding sections may be done in the Presidency-towns [1] * * * * by the Commissioner of Police; and all duties which a darogah or district police-officer is authorized or required to perform, may be performed in any of the said towns [1] * * by an officer of the police-force not below the rank of Inspector.

Detention of supposed lunatics

[2] **6A.** (*1*) Where a person found wandering at large who is deemed to be a lunatic, or where a person believed to be dangerous by reason of

[1] The words "and the Stations of the Straits Settlement" and the words "and Stations" in s. 6 were repealed by the Repealing Act, 1874 (16 of 1874).

[2] S. 6A was inserted by s. 1 of the Indian Lunatic Asylums Act (1858) Amendment Act, 1886 (18 of 1886), Genl. Acts, Vol. III.

lunacy, is apprehended and sent to the Magistrate or the Commissioner of Police, or where, on report or information that a person deemed to be a lunatic is not under proper care and control or is cruelly treated or neglected, the Magistrate or the Commissioner of Police sends for him and then determines to proceed as prescribed in section 4 of this Act, the Magistrate or the Commissioner of Police, on the request of the Medical Officer, may, by order in writing, authorize the detention of the supposed lunatic for such time, not exceeding ten days, as, in the opinion of the Magistrate, or the Commissioner of Police, may be necessary to enable the Medical Officer to form an opinion on the question whether or not the supposed lunatic is a person with respect to whom a certificate in the Form A in the Schedule to this Act ought to be signed. Order of observation.

(*2*) If the Medical Officer certifies further detention than has been authorized under sub-section (*1*) to be necessary to enable him to form his opinion on that question, the Magistrate or the Commissioner of Police may from time to time, by order in writing, authorize such further detention as he deems to be necessary.

Provided that a supposed lunatic shall not be detained for the purpose of this section for a longer time than fourteen days from the date on which the first order authorizing his detention for that purpose is made.

(*3*) The Executive Government may from time to time make [1] rules as to the place of detention and the care and treatment of supposed lunatics detained under this section.

7. Except as otherwise hereinbefore provided, no person shall be received into a lunatic asylum in any Presidency-town [2] * * * * * without an order under the hand of some person in the Form B in the Schedule to this Act, together with such [3] statement of particulars as is contained in the said Form B; nor unless such person has been found lunatic by inquisition or under an enquiry directed by an order of one of the Courts of Judicature established by Royal Charter, without the medical certificate containing the particulars in Form A in the Schedule Order and certificate for reception into an asylum in Presidency-towns and Straits Settlement.

[1] For rules under section 6 (*3*) in force in—
(1) Assam, *see* Assam R. M.
(2) Bombay, *see* Bom. R. & O., Vol. I.
(3) Burma, *see* Bur. R. M., Vol. II.
(4) Coorg—declaring the Mercara Jail as the place of detention of suspected lunatics detained under that section—*see* Coorg District Gazette, 1905, Pt. I, p. 1.
(5) Madras, *see* Mad. R. & O., Vol. I.
(6) The Punjab, *see* Punjab Gazette, 1901, Pt. I, p. 1262.
(7) The United Provinces of Agra and Oudh, *see* U. P. List of Loc. R. & O., Vol. I, Pt. 1, List 3.

[2] The words " or in any Station of the Straits Settlement " were repealed by the Repealing Act, 1874 (16 of 1874).

[3] For form of such statement to accompany patients sent for treatment to the Lahore Lunatic Asylum—*see* Punj. List of Local R. & O.

to this Act, of two persons each of whom shall be a Physician or Surgeon and one of whom shall be a Presidency Surgeon or a Surgeon in the employment of the Government. When such order is presented, the visitors or manager of the asylum, before admitting the lunatic into the asylum, may require the friends of the said lunatic to engage to pay the expenses which may be incurred for the lodging, maintenance, clothing, medicine and care of the lunatic, unless it shall appear to the said visitors that they have not sufficient means of doing so.

In places other than Presidency-towns, etc., no person to be received into asylum without order of Civil Court.

8. *Clause 1.*—In places other than those specified in the last preceding section, no person shall be received into a lunatic asylum, except as otherwise hereinbefore provided, without an order of the Civil Court.

Application for order to be made by a guardian, if a guardian has been appointed.

Clause 2.—When any person has been adjudged to be a lunatic, and a guardian for such lunatic has been appointed by the Court of Wards or the Collector or by the Civil Court, if such guardian shall desire that the lunatic be admitted into a lunatic asylum, he shall make application to the Civil Court, and the Judge, with the assistance of a Medical Officer, shall examine such lunatic, and if the Medical Officer shall sign a certificate in the Form A in the Schedule to this Act, and the Judge shall be satisfied that the lunatic is a proper person to be detained under care and treatment in a lunatic asylum, he shall make an order for such person to be received into the asylum established for the Division in which his jurisdiction is situate, or, if he think fit, into any licensed asylum mentioned in the application.

Application where no guardian has been appointed.

Clause 3.—If any relative or friend of any person for whom a guardian has not been appointed by the Court of Wards or the Collector or by the Civil Court, desires that such person may be admitted into a lunatic asylum, he may make application to the Civil Court, and the Judge, if he see sufficient reason for so doing, shall enquire into the fact of lunacy in the same manner as if an application had been made to the Civil Court under the provisions of section 3 of [1] Act XXXV of 1858, entitled "*An Act to make better provision for the care of the estates of Lunatics not subject to the jurisdiction of the Supreme Courts of Judicature;*" and, if the lunacy be established, the Judge may then proceed in the manner prescribed in the second clause of this section.

Order for payment of expenses.

Clause 4.—Whenever the Judge shall make an order for the reception of any person into a lunatic asylum, he shall, at the same time, make an order for the payment of the expenses to be incurred for the lodging, maintenance, clothing, medicine and care of such person;

[1] *Supra.*

and such expenses shall be recovered by the Judge on the application of the visitors or manager of such asylum:

Provided however that, if it shall appear to the satisfaction of the Judge that the lunatic has not sufficient property and that no person legally bound to maintain the said lunatic has sufficient means for the payment of sunch expenses, he shall certify the same in the order for the reception of the lunatic into the asylum, instead of making such order for the payment of expenses as aforesaid. Proviso.

Order of discharge from asylum.

9. [1][Subject to the provisions of any enactment for the time being in force,] it shall be lawful for three of the visitors of any asylum, of whom one shall be a Medical Officer, by writing under their hands, to order the discharge of any person detained in such asylum. When such order is given, if the person is detained under the order of any public officer, notice of the order of discharge shall be immediately communicated to such officer.[2]

Order of discharge on undertaking of relative for due treatment of the lunatic.

10. When any relative or friend of a lunatic detained in any asylum under the provisions of section 4, section 5 or section 6 of this Act, is desirous that such lunatic shall be delivered over to his care and custody, he shall make application to the Magistrate or Commissioner of Police under whose order the lunatic is detained, and the Magistrate or Commissioner of Police, if he think fit, after communication with the visitors or with one of them being a Medical Officer, and upon the undertaking in writing of such relative or friend to the satisfaction of the said Magistrate or Commissioner that such lunatic shall be properly taken care of and shall be prevented from doing injury to himself or others, shall make an order for the discharge of such lunatic, and such lunatic shall thereupon be discharged.

11. [*Inspector of Jails may make order of removal from one public asylum to another.*] *Rep. by the Indian Lunatic Asylums Act (1858) Amendment Act, 1889 (XX of 1889).*

Amendment of order or certificate.

12. If, after the reception of any lunatic into any asylum, it appear that the order or the medical certificate or certificates upon which he was received is or are defective or incorrect, the same may at any time afterwards be amended by the person or persons signing the same with the sanction of two or more of the visitors of the said asylum, one of whom shall be a Medical Officer.

Order and certificate to justify detention and re-capture after escape.

13. Every person received into a lunatic asylum under any such order as is required by this Act accompanied by the requisite medical certificate, may be detained therein until he be removed or discharged as authorized by this Act, and in case of escape may, by virtue of such

[1] The words in square brackets in s. 9 were inserted by s. 2 of the Indian Lunatic Asylums Act (1858) Amendment Act, 1886 (18 of 1886), Genl. Acts, Vol. III.

[2] The provisions of s. 9 have been applied to prisoners in lunatic asylums—*see* the Prisoners Act, 1900 (3 of 1900), s. 30 (*3*), Genl. Acts, Vol. V.

order, be re-taken by the manager of such asylum, or any officer or servant belonging thereto, or any other person authorized in that behalf by the said manager, or any police-officer, and conveyed to and received and detained in such asylum.

In what cases Government to pay for the maintenance of lunatic.

14. When any lunatic is sent to a licensed asylum by order of a Magistrate or Commissioner of Police under section 4, section 5 or section 6 of this Act, and when a lunatic is admitted into such asylum under section 7, or an order for the reception of a lunatic is made under section 8, and no engagement has been taken from the friends of the lunatic or order made by the Judge for the payment of expenses under the said section 7 or section 8, respectively, the expense of the lodging, maintenance, clothing, medicine and care of such lunatic shall be paid by the Government to the manager of such asylum.

Civil Court, on application of Magistrate, may make order for the payment of cost of maintenance out of the lunatic's estate, or by person bound to maintain him.

15. The Magistrate or Commissioner of Police by whom any lunatic has been sent to a lunatic asylum, if it appear to such Magistrate or Commissioner that such lunatic has an estate applicable to his maintenance and more than sufficient to maintain his family, or that any person is legally bound to maintain and has the means of maintaining such lunatic, may apply to the chief Civil Court of original jurisdiction within the local jurisdiction of which the estate of the lunatic may be situate or the person legally bound to maintain him may reside, and such Court shall enquire into the matter in a summary way, and on being satisfied that such lunatic has an estate applicable to his maintenance, or that any person is legally bound to maintain and has the means of maintaining such lunatic, shall make an order for the recovery of the charges of the lodging, maintenance, clothing, medicine and care of such lunatic out of such estate or from such person.

Enforcement, etc., of order.

Such order shall be enforced in the same manner, and shall be of the same force and effect and subject to the same appeal as any judgment or order made by the said Court in a regular suit in respect of the property or person therein mentioned.

Property in the possession of a lunatic found wandering.

Any personal property which may be in the possession of a lunatic found wandering at large may be sold by the Magistrate and the proceeds thereof (or such part of the same as may be necessary) applied towards the payment of the charges of the lodging and maintenance of the lunatic, and of any other expenses incurred on his behalf.

Saving of liability of relatives to maintain lunatic.

16. The liability of any relative or person to maintain any lunatic shall not be taken away or affected by any provision contained in this Act.

Saving of powers of Supreme Court, etc., and of Act IV of 1849.

17. Nothing contained in this Act shall be taken to interfere with the power of any of the Courts of Judicature established by Royal Charter over any person found to be a lunatic by inquisition or under the provisions of [1] Act XXXIV of 1858 entitled "*An Act to regulate pro-*

[1] *Supra.*

ceedings in Lunacy in the Courts of Judicature established by Royal Charter," or with the rights of any Committee of the person or estate of such lunatic,[1] * * * * * * * * * * .

Provision for provinces having insufficient or no asylums.

[2]**17A.** In either of the following cases, namely:—

(*a*) when an Executive Government has not established within its limits a public asylum for the reception and detention of lunatics,

(*b*) when it appears to the Governor General in Council that a public asylum established within such limits is not conveniently situated with respect to any part of the territories administered by such Government, or does not afford sufficient or, in the case of any class of lunatics, suitable accommodation,

the Governor General in Council may from time to time appoint an Asylum[3] in any part of British India beyond the limits of such Government, to be an asylum to which any Magistrate or Judge exercising jurisdiction within those limits may send lunatics or any class of lunatics as to an asylum established under this Act for the division in which his jurisdiction is situate.

Use of Provincial asylums as Presidency asylums for purposes of the Act.

[4]**17B.** The Governor General in Council may from time to time, by [5] order, direct, with respect to any part of British India which is not annexed to a presidency or, being annexed to the presidency of Fort William, Fort Saint George or Bombay, is situated at a greater distance than three hundred miles from Calcutta, Madras or Bombay, respectively, that any lunatic asylum in British India named in the order shall be deemed for that part to be a lunatic asylum at the presidency for the purposes of this Act.

Removal of lunatics from one asylum to another.

[6]**17C.** Any lunatic may be removed from any lunatic asylum established or licensed under this Act, by order of an Executive Government, to any other such asylum within the limits of such Government,

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[1] The words and figures " or to affect the provisions of Act IV of 1849 entitled ' *An Act for the safe custody of Criminal Lunatics,*" were repealed by the Repealing Act, 1874 (16 of 1874).

[2] The present s. 17A was substituted by s. 1 of the Indian Lunatic Asylums Act (1858) Amendment Act, 1889 (20 of 1889), for the section inserted by the Indian Lunatic Asylums Act (1858) Amendment Act, 1886 (18 of 1886), s. 3. For Act 20 of 1889, *see* Genl. Acts, Vol. IV.

[3] For order appointing the Dacca Lunatic Asylum to be an asylum to which the Deputy Commissioners of Sylhet and Cachar may send lunatics, *see* Assam R. & O. p. 1; for order appointing the Lunatic Asylum at Lahore to be an asylum to which any Magistrate or Judge in the North-West Frontier Province may send lunatics, *see* Gazette of India, 1901, Pt. I, p. 936; and for order appointing the lunatic asylums at Calicut and Vizagapatam to be lunatic asylums—*see* Mad. R. & O., Vol. I.

[4] S. 17B was inserted by the Indian Lunatic Asylums Act (1858) Amendment Act, 1886 (18 of 1886), s. 3—*see* Genl. Acts, Vol. III.

[5] For notification declaring the lunatic asylums at Bareilly and Benares to be lunatic asylums under this section—*see* U. P. List of Loc. R. & O., Vol. I, Pt. I, List 3.

[6] S. 17C was inserted by the Indian Lunatic Asylums Act (1858) Amendment Act, 1889 (20 of 1889), s. 2, Genl. Acts, Vol. IV.

and by order of the Governor General in Council to any other asylum in any part of British India.

Interpretation. "Lunatic." "Magistrate."

18. The word "lunatic," as used in this Act, shall mean and include every person of unsound mind, and every person being an idiot.

The word "Magistrate" shall include a person exercising the powers of a Magistrate.

SCHEDULE.

FORM A.

CERTIFICATE OF MEDICAL OFFICER.

(*See sections 4 and 8.*)

I, the undersigned (*here enter name and official designation*), hereby certify that I, on the day of at personally examined (*here enter name and residence of lunatic*), and that the said is a lunatic (*or an idiot, or a person of unsound mind*) and a proper person to be taken charge of, and detained under care and treatment, and that I have formed this opinion on the following grounds, namely:—

1. Facts indicating insanity observed by myself (*here state the facts*).

2. Other facts (if any) indicating insanity communicated to me by others (*here state the information and from whom*).

(Signed)

FORM B.

ORDER FOR THE RECEPTION OF A PRIVATE PATIENT.

(*See section 7.*)

I, the undersigned, hereby request you to receive A. B., a lunatic, (*or an idiot or a person of unsound mind,*) as a patient into your asylum. Subjoined is a statement respecting the said A. B.

(Signed) name

Occupation (if any)

Place of abode

Degree of relationship (if any), or other circumstance of connexion with the patient.

Dated this day of one thousand eight hundred and

To Superintendent of the asylum at (*describing the asylum*).

STATEMENT.

[*If any of the particulars in this Statement be not known, the fact to be so stated.*]

Name of patient, with Christian name at length.

Sex and age.

Married, single, or widowed.

Condition of life, and previous occupation (if any).

The religious persuasion, as far as known.

Previous place of abode.

Whether first attack.

Age (if known) on first attack.

When and where previously under care and treatment.

Duration of existing attack.

Supposed cause.

Whether subject to epilepsy.

Whether suicidal.

Whether dangerous to others.

Whether found lunatic by inquisition or enquiry under order of Court, and date of Commission or order for inquisition or enquiry.

Whether any member of patient's family has been or is affected with insanity.

(Signed) Name.

[*Where the person signing the statement is not the person who signs the order, the following particulars concerning the person signing the statement are to be added, namely,*]

Occupation (if any).

Place of abode.

Degree of relationship (if any), or other circumstances of connexion with the patient.

ACT No. I OF 1859 [1].

[*25th January, 1859.*]

An Act for the amendment of the law relating to Merchant Seamen.

Preamble.

WHEREAS the law for the registry of seamen and the grant of register-tickets has been found to be ineffective for the purposes intended;

and whereas by section 288 of an Act of the Imperial Parliament called [2] "The Merchant Shipping Act, 1854," it is enacted that "if the Governor General of India in Council or the respective legislative authorities in any British possession abroad, by any Acts, Ordinances or other appropriate legal means, apply or adapt any of the provisions in the third part of this Act contained to any British ships registered at, trading with or being at any place within their respective jurisdictions, and to the owners, masters, mates and crews thereof, such provisions, when so applied and adapted as aforesaid, and as long as they remain in force, shall in respect of the ships and persons to which the same are applied be enforced, and penalties and punishments for the breach thereof shall be recovered and inflicted throughout Her Majesty's dominions in the same manner as if such provisions had been hereby so adapted and applied, and such penalties and punishments had been hereby expressly imposed;" 17 & 18 Vict., c. 104.

and whereas it is expedient to discontinue the practice of registry and the grant of register-tickets, and to apply to ships registered at, trading with or being at any port or place in India certain provisions of the third part of the said Act with such adaptations and modifications as

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[1] Short title, "The Indian Merchant Shipping Act, 1859." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by s. 3 of the Laws Local Extent Act, 1874 (15 of 1874), Genl. Acts, Vol. II.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India,	1878, Pt. I, p. 482.
Aden	Ditto	1879, Pt. I, p. 434.
The Andaman and Nicobar Islands.	Ditto	1882, Pt. I, p. 148.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.

Ch. III of the Indian Merchant Shipping Act, 1880 (7 of 1880), and Ch. IV of the Indian Merchant Shipping Act, 1883 (5 of 1883), relating respectively to distressed seamen and to agreements with seamen are to be read with, and taken as part of, this Act. *See* Act 7 of 1880, s. 54, and Act 5 of 1883, s. 25, Genl. Acts, Vol. III.

[2] The Merchant Shipping Act, 1854, has been repealed by the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60). S. 264 and Pt. II of the latter correspond to s. 288 and Pt. III, respectively, of the former. For the latter, *see* Coll. Stats., Ind., Vol. II.

are required, and for the purposes aforesaid to repeal the laws now in force in India relating to merchant seamen;

It is enacted as follows:—

1. (*Repeal of Acts.*) *Rep. by the Repealing Act, 1870 (XIV of 1870).*

SHIPPING OFFICES [1].

Shipping offices.

2. [2] A shipping office shall be established at each of the ports of Calcutta, Madras and Bombay, and at such other ports [3] as the Governor General of India in Council shall hereafter deem necessary. For every such office there shall be a superintendent, to be called a "shipping-master," with such necessary deputies, clerks and servants at such salaries, and subject to such regulations, as the Local Government shall, from time to time, with the sanction of the Governor General of India in Council, direct and appoint.

Every act done by or before any deputy duly appointed shall have the same effect as if done by or before a shipping-master.

Appointment, etc., of shipping-masters and deputies.

3. The Local Government shall have power to appoint and remove such shipping-masters and deputies, who shall respectively be subject to the control of that Government or of any intermediate authority which it may [4] appoint.

Business of shipping-masters.

4. [5] It shall be the general business of shipping-masters appointed under this Act to superintend and facilitate the engagement and discharge of seamen in manner hereinafter mentioned, to provide means for securing the presence on board at the proper times of men who are so engaged, and to perform such other duties relating to merchant seamen and merchant ships as are hereby or under the said [6] Merchant Shipping Act, 1854, or as may hereafter under the powers herein contained, be committed to them.

17 & 18 Vict., c. 104.

It shall also be the duty of shipping-masters to give to all persons desirous of apprenticing boys to the sea-service, and duly authorized so

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[1] These offices are now designated "Mercantile Marine Offices." *See* s. 246 of the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), Coll. Stat., Ind., Vol. II.

[2], [5] *Cf.* ss. 123 and 124 of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

[3] For notifications establishing a Shipping Office and appointing Shipping Masters at —
Karachi and Karwar, *see* Bom. R. & O., Vol. I.
Moulmein and Rangoon, *see* Notification No. 4934, Calcutta Gazette, 1859, p. 1882.

[4] For instances of such appointment under section 3 for—
(1) Bengal—*see* Ben. Stat. R. & O., Vol. II.
(2) Madras—*see* Mad. R. & O. Vol. I.

[6] *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), Coll. Stats. Ind., Vol. II.

to do by Act [1] XIX of 1850 (*concerning the binding of apprentices*), and also to masters and owners of ships requiring apprentices, such assistance as may be in their power for facilitating the making of such apprentice-ships. XIX of 1850.

Fees to be paid upon engagements and discharges.

5. [3] Such fees, not exceeding the sums specified in the table marked (A) in the Schedule to this Act, as are from time to time [2] fixed by the Local Government, shall be payable upon all engagements and discharges effected before shipping-masters as hereinafter mentioned. Scales of the fees payable for the time being shall be conspicuously placed in the shipping offices; and all shipping-masters, their deputies, clerks and servants may refuse to proceed with any engagement unless the fees payable thereon are first paid.

Fees by whom to be paid, etc.

6. [4] Every owner or master of a ship engaging or discharging any seaman in a shipping office or before a shipping-master, shall pay to the shipping-master the whole of the fees hereby made payable in respect of such engagement or discharge, and may, for the purpose of in part re-imbursing himself, deduct in respect of each such engagement or discharge from the wages of all persons (except apprentices) so engaged or discharged, and retain, any sums not exceeding the sums specified in that behalf in the table marked (B) in the schedule hereto:

Provided that, if in any cases the sums which the owner is so entitled to deduct, exceed the amount of the fee payable by him, such excess shall be paid by him to the shipping-master, in addition to such fee.

Penalty on shipping-master taking other remuneration.

7. [5] Any shipping-master, deputy shipping-master, or any clerk or servant in any shipping office, who demands or receives any remuneration whatever, either directly or indirectly, for hiring or supplying any seamen for any merchant ship, excepting the lawful fees payable under this Act, shall for every such offence incur a penalty not exceeding two hundred rupees, and shall also be dismissed from his office.

Business of shipping office may be transacted at custom house or elsewhere.

8. [6] The Local Government may direct that at any place at which no separate shipping office is established, the whole or any part of the business of the shipping office shall be conducted at the custom-house, or at the office of the master attendant or harbour-master, or at such other [7] office as the Government shall direct, and thereupon the same shall be there conducted accordingly; and in respect of such business

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[1] *Supra.*

[2] For scale of fee fixed by the Government of Burma, *see* Bur. Gazette, 1906, Pt. I, p. 359.

[3], [4], [5] & [6] *Cf.* ss. 125, 126, 127 and 128, respectively, of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

[7] For notifications under this section for—

(1) Aden, *see* Bom. Loc. R. & O., Vol. I.
(2) Bengal, *see* Ben. Loc. Stat. R. & O., Vol. I.
(3) Burma, *see* Bur. R. M., Vol. I.
(4) Madras, *see* Mad. Loc., R. & O., Vol. I.

such custom-house or office as aforesaid shall for all purposes be deemed to be a shipping office, and the officer of customs or other officer there, to whom such business is committed, shall for all purposes be deemed to be a shipping-master within the meaning of this Act.

EXAMINATIONS AND CERTIFICATES OF MASTERS AND MATES.[1]

Examinations.

9.[2] Examinations shall be instituted for persons who intend to become masters or mates of foreign-going ships or of home-trade ships of a burden exceeding three hundred tons, or who wish to procure certificates of competency hereinafter mentioned.

Local Government to appoint examiners.

Rules for conduct of examination.

Fees.

10.[3] The Local Government, or any Board or officer duly authorized by the Local Government in that behalf shall from time to time nominate two or more competent persons for the purpose of examining the qualifications of the applicants for examination. The Local Government may, with the sanction of the Governor General of India in Council, make [4] rules for the conduct of such examinations and as to the qualifications to be required; and such rules shall be strictly adhered to by all examiners. [5][Fees at such rates as the Local Government may, from time to time, with the previous sanction of the Governor General in Council, fix in this behalf, shall be paid by all applicants for examination.]

Certificate of competency.

11.[6] The Local Government or such Board or officer as aforesaid shall deliver to every applicant who is reported by the examiners to have passed the examination satisfactorily, and to have given satisfactory evidence of his sobriety, experience, ability and general good conduct on boardship, a certificate (hereinafter called a "certificate of competency", to the effect that he is competent to act as master or mate of a foreign-going ship or of a home-trade ship of a burden exceeding three hundred tons as the case may be:

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[1] Ss. 9 to 16 do not apply to ships registered under the Indian Registration of Ships Act, 1841 (10 of 1841), and trading between ports in India and the coasts of Arabia, when such ships are navigated and manned exclusively by Arabs, lascars or other Asiatic masters and seamen. *See* the Indian Merchant Shipping Act, 1883 (5 of 1883), s. 37, Genl. Acts, Vol. III.

[2], [3] & [6] *Cf.* ss. 131, 132 and 134, respectively, of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

[4] For Rules under section 10 for—

(1) Bengal, *see* Ben. Stat. R. & O., Vol. I.
(2) Bombay, *see* Bom. R. & O., Vol. I.
(3) Madras, *see* Mad. R. & O., Vol. I.

[5] These words were substituted for the words " Fees at the following rates shall be paid by all applicants for examination :—

" For a certificate as master . . . . . ten Rupees.
Ditto as mate . . . . . five ,,

by the Indian Merchant Shipping Act, 1883 (5 of 1883), s. 3, Genl. Acts, Vol. III.

[1]Provided that the Local Government may in any case in which it has reason to believe that such report has been unduly made, require, before granting a certificate, a re-examination of the applicant or a further enquiry into his testimonials and character.

Certificates of service.

12. [2] Certificates of service differing in form from certificates of competency shall be granted as follows, (that is to say)—

1.—Every person who before the passing of this Act has served as master in the British merchant service or as master of any foreign-going ship registered under [3] Act X of 1841, or who has attained or shall attain the rank of lieutenant, master, passed mate, or second mate, [4] [or any corresponding or higher rank in the service of Her Majesty or the rank of commander or first grade officer in the Indian Marine Service], shall be entitled to a certificate of service as master for foreign-going ships. X of 1841.]

2.—Every person who before the passing of this Act has served as mate in the British merchant service or as mate of any such ship as aforesaid [5] [or who has attained or shall attain the rank of second grade officer in the Indian Marine Service], shall be entitled to a certificate of service as mate for foreign-going ships.

3.—Every person who before the passing of this Act has served as master or mate of a home-trade ship of a burden exceeding three hundred tons, shall be entitled to a certificate of service as master or mate (according to such previous service) for such home-trade ships.

And each of such certificates of service shall contain particulars of the name and of the length and nature of the previous service of the person to whom it is delivered; and the Local Government or such other authority as aforesaid shall deliver such certificates of service to the various persons so respectively entitled thereto upon their proving themselves to have attained such rank or to have served as aforesaid; and upon their giving a full and satisfactory account of the particulars aforesaid.

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[1] This proviso was inserted by the Indian Merchant Shipping Act, 1883 (5 of 1883), s. 35, Genl. Acts, Vol. III.

[2] *Cf.* the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104), s. 135.

[3] *Supra.*

[4] These words were substituted for the words " or any higher rank in the service of Her Majesty or of the East India Company " by the Indian Merchant Shipping Law Amendment Act, 1891 (6 of 1891), s. 1 (*1*), Genl. Acts, Vol. IV.

[5] These words were inserted by the Indian Merchant Shipping Law Amendment Act, 1891 (6 of 1891), s. 1 (*2*).

No foreign-going ship and no home-trade ship above 300 tons to go to sea without certificated master, etc.

13. [1] No foreign-going ship or home-trade ship of a burden exceeding three hundred tons shall go to sea from any port in India unless the master and one officer besides the master have obtained and possess valid and appropriate certificates either of competency or service under this Act or under the [2] Merchant Shipping Act, 1854; and whoever, having been engaged to serve as master or mate, goes to sea as aforesaid as such master or mate, without being at the time entitled to and possessed of such a certificate as hereinbefore required, and whoever employs any person as such master or mate without ascertaining that he is at the time entitled to and possessed of such certificate, shall for each such offence be liable to a penalty of five hundred rupees.

17 & 18 Vict., c. 104.

Certificates for foreign-going ships available for home-trade ships.

14. [3] Every certificate of competency for a foreign going ship shall be deemed to be of a higher grade than the corresponding certificate for a home-trade ship, and shall entitle the lawful holder thereof to go to sea in the corresponding grade in such last-mentioned ship; but no certificate for a home-trade ship shall entitle the holder to go to sea as master or mate of a foreign-going ship.

Record of grants, cancellations, etc., of certificates.

15. [4] All certificates, whether of competency or service, shall be made in duplicate; and one part shall be delivered to the person entitled to the certificate, and the other shall be kept and recorded as the Local Government shall direct. A note of all orders made for cancelling, suspending, altering or otherwise affecting any certificate in pursuance of the powers herein contained shall be entered in the record of certificates.

Loss of certificate.

16. [5] Whenever any master or mate proves to the satisfaction of the Local Government or such other authority as aforesaid that he has, without fault on his part, lost or been deprived of any certificate already granted to him, a copy of the certificate to which by the record so kept as aforesaid he appears to be entitled, shall be delivered to him, and shall have all the effect of the original.

17. [6] [*Exemption from sections 9 to 16 of certain ships registered under Act X of 1841.*] *Rep. by Act XV of 1863.*

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[1] *Cf.* the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104), s. 136.

[2] *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), by which the Merchant Shipping Act, 1854, has been repealed. *See* Coll. Stats., Ind., Vol. II.

[3], [4] & [5] *Cf.* ss. 137, 138 and 139, respectively, of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

[6] This exemption is now provided for by s. 37 of the Indian Merchant Shipping Act, 1883 (5 of 1883). *See* first foot-note on p. 173, *supra*.

ENGAGEMENT OF SEAMEN.

Licenses to procure seamen.

18. [1] The Local Government, or any Board or officer duly authorized [2] by the Local Government in that behalf, may grant to such persons as may be deemed fit, licenses to engage or supply seamen for merchant ships, to continue for such periods, to be upon such terms, and to be revocable upon such conditions as the Government thinks proper.

Penalties.

19. [3] The following offences shall be punishable as hereinafter mentioned; (that is to say)—

For supplying seamen without license.

(1) If any person not licensed as aforesaid, other than the owner or master or mate of the ship, or some person who is *bonâ fide* the servant and in the constant employ of the owner, or a shipping master duly appointed as aforesaid, engages or supplies any seaman to be entered on board any ship, he shall for each seaman so engaged or supplied incur a penalty not exceeding one hundred rupees.

For employing unlicensed persons.

(2) If any person employs any unlicensed person, other than persons so excepted as aforesaid, for the purpose of engaging or supplying any seaman to be entered on board any ship, he shall for each seaman so engaged or supplied incur a penalty not exceeding one hundred rupees, and, if licensed, shall in addition forfeit his license.

For receiving seamen illegally supplied.

(3) If any person knowingly receives or accepts to be entered on board any ship any seaman who has been engaged or supplied contrary to the provisions of this Act, he shall for every seaman so engaged or supplied incur a penalty not exceeding one hundred rupees.

Penalty for receiving remuneration from seamen for shipping them.

20. [4] If any person demands or receives, either directly or indirectly, from any seaman, or from any person seeking employment as a seaman, or from any person on his behalf, any remuneration whatever, other than the fees hereby authorized, for providing him with employment, he shall for every such offence incur a penalty not exceeding fifty rupees, and, if licensed as aforesaid, shall in addition forfeit his license.

21. [5] [*Agreements with Seamen.*] *Rep. by Act XV of 1863.*

Rules as to agreements

22. [6] In the case of all foreign-going ships [7] in whatever part of Her-

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[1], [3] & [4] *Cf.* ss. 146, 147 and 148, respectively, of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

[2] For notification authorizing the Shipping Master, Rangoon, to grant licenses to engage or supply seamen for merchant ships—*see* Bur. R. M. Vol. I, p. 8.

[5] *See* now the Indian Merchant Shipping Act, 1883 (5 of 1833), Ch. IV.

[6] *Cf.* 17 & 18 Vict., c. 104, s. 150.

[7] For definition, *see* s. 118, *infra*.

Majesty's dominions the same are registered, the following rules shall be observed with respect to agreements; (that is to say)— in case of foreign-going ships.

(1) Every agreement made in any port in India (except in such cases of agreements with substitutes as are hereafter specially provided for) shall be signed by each seaman in the presence of a shipping-master. Agreement to be signed by seaman.

(2) Such shipping-master shall cause the agreement to be read over and explained to each seaman, in a language understood by him, or shall otherwise ascertain that each seaman understands the same before he signs it, and shall attest each signature. Shipping-master to cause agreement to be explained to seaman;

(3) When the crew is first engaged the agreement shall be signed in duplicate, and one part shall be retained by the shipping-master, and the other part shall contain a special place or form for the descriptions and signatures of substitutes or persons engaged subsequently to the first departure of the ship, and shall be delivered to the master. to be in duplicate.

(4) In the case of substitutes engaged in the place of seamen who have duly signed the agreement, and whose services are lost within twenty-four hours of the ship's putting to sea by death, desertion or other unforeseen cause, the engagement shall, when practicable, be made before some shipping-master duly appointed in the manner hereinbefore specified; and whenever such last-mentioned engagement cannot be so made, the master shall, before the ship puts to sea if practicable, and if not, as soon afterwards as possible, cause the agreement to be read over and explained to the seamen; and the seamen shall thereupon sign the same in the presence of a witness, who shall attest their signatures. Provision for substitutes.

23. [1] In the case of foreign-going ships making voyages averaging less than six months in duration, running agreements with the crew may be made to extend over two or more voyages, so that no such agreement shall extend beyond the next following 30th day of June or 31st day of December, or the first arrival of the ship at her port of destination in India after such date, or the discharge of cargo consequent upon such arrival; and every person entering into such agreement, whether engaged upon the first commencement thereof or otherwise, shall enter into and sign the same in the manner hereby required for other foreign- Foreign-going ships making short voyages may have running agreements.

[1] *Cf.* the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104), ss. 151 and 152, respectively.

going ships, and every person engaged thereunder, if discharged in any port in India, shall be discharged in the manner hereby required for the discharge of seamen belonging to other foreign-going ships.

[1] Notwithstanding anything in this section, in the case of any such foreign-going ship as aforesaid, being a ship—

(*a*) registered in British India under the Merchant Shipping Act, 1894, or 57 & 58 Vict., c. 60.

(*b*) registered in the United Kingdom under the said Merchant Shipping Act, 1894, but not employed in trading with any port in the United Kingdom,

a running agreement with the crew may be made to extend over two or more voyages so that it shall terminate either within six months from the date on which it was executed or on the first arrival of the ship at her port of destination in British India after the expiration of that period, or on the discharge of cargo consequent upon such arrival, whichever of these dates shall be the latest:

Provided that no such agreement shall continue in force, if after the expiration of such period of six months as aforesaid, the ship proceeds on a voyage from a port out of British India to any other such port which is not on the direct road or a customary route to her port of destination in British India:

Provided also that every such agreement shall, in addition to any other particulars required by law, contain such stipulations for the discharge of the crew and payment of their wages, for securing their return to the port at which they were shipped or to some other port in British India, and for other purposes on the termination of the agreement at a port out of British India under the foregoing proviso, as the Governor General in Council may direct.

Engagement and discharge of seamen in the meantime.

24. [2] The master of every foreign-going ship for which such a running agreement as aforesaid is made shall, upon every return to any port in India before the final termination of the agreement, discharge or engage before the shipping-master at such port any seaman whom he is required by law so to discharge or engage; and shall upon every such return endorse on the agreement a statement (as the case may be) either that no such discharges or engagements have been made or are intended to be made before the ship again leaves port, or that all such discharges or engagements have been duly made as hereinbefore required, and shall deliver the agreement so endorsed to the shipping-master;

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[1] The last para. and the two provisos thereto were added to s. 23 by s. 2 of the Indian Merchant Shipping (Amendment) Act, 1906 (6 of 1906), Genl. Acts, Vol. VI.

[2] *Cf.* the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104), ss. 151 and 152, respectively.

and any master who wilfully makes a false statement in such endorsement shall incur a penalty not exceeding two hundred rupees;

and the shipping-master shall also sign an endorsement on the agreement to the effect that the provisions of this Act relating to such agreement have been complied with, and shall re-deliver the agreement so endorsed to the master.

Renewal of running agreements in certain cases.

24A. [1] (*1*) When a running agreement with the crew of a foreign-going ship has been made under section 23 and the ship arrives after the next following thirtieth day of June or thirty-first day of December [2] [or, as the case may be, after the expiration of a period of six months from the date on which it was enacted] at a port of destination in India which is not the port at which the crew have agreed to be discharged, the master may, with the previous sanction of the shipping-master, renew the agreement with the crew, or may be required by the shipping-master so to renew the agreement for the voyage from such port of destination to the port in India at which the crew have agreed to be discharged.

(*2*) If the master of the ship is required by the shipping-master to renew the agreement as aforesaid and refuses so to renew it, any expenses which may be incurred by the Government for the subsistence of the crew and their conveyance to the port at which they have agreed to be discharged shall be a charge upon the ship, and shall be recoverable as if they were expenses incurred in respect of distressed seamen under the provisions of Chapter III of the [3] Indian Merchant Shipping Act, 1880.

VII of 1880.

Fees to be paid on such running agreements.

25. [4] For the purpose of determining the fees to be paid upon the engagement and discharge of seamen belonging to foreign-going ships which have running agreements as aforesaid, the crew shall be considered to be engaged when the agreement is first signed, and to be discharged when the agreement finally terminates; and all intermediate engagements and discharges shall be considered to be engagements and discharges of single seamen.

In home-trade ships agreement to be entered into before a shipping-master or other witness.

26. [5] In the case of home-trade ships of a burden exceeding three hundred tons, crews or single seamen may, if the master thinks fit, be engaged before a shipping-master in a manner hereinbefore directed with respect to foreign-going ships; and in every case in which the engagement is not so made, the master shall, before the ship puts to sea, if practicable, and, if not, as soon afterwards as possible, cause the agree-

[1] This section was inserted by the Indian Merchant Shipping Law Amendment Act, 1891 (6 of 1891), s. 2, Genl. Acts, Vol. IV.

[2] These words in s. 24A were inserted by s. 3 of the Indian Merchant Shipping (Amendment) Act, 1906 (6 of 1906), Genl. Acts, Vol. VI.

[3] For Act 7 of 1880, *see* Genl. Acts, Vol. IV.

[4] *Cf.* the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104), s. 154.

[5] *Cf.* the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104), ss. 155, 156, 157 and 158, respectively.

ment to be read over and explained to each seaman, and the seaman shall thereupon sign the same in the presence of a witness, who shall attest his signature.

Special agreements for home-trade ships belonging to same owner.

27.[1] In cases where several home-trade ships belong to the same owner, the agreement with the seamen may, notwithstanding anything herein contained, be made by the owner instead of by the master, and the seamen may be engaged to serve in any two or more of such ships, provided that the names of the ships and the nature of the service are specified in the agreement, but with the foregoing exception, all provisions herein contained which relate to ordinary agreements for home-trade ships shall be applicable to agreements made in pursuance of this section.

Penalty for shipping seamen without agreement duly executed.

28.[1] If in any case a master carries any seaman to sea without entering into an agreement with him in the form and manner and at the place and time hereby in such case required, the master shall for each such offence incur a penalty not exceeding fifty rupees.

Changes in crew to be reported.

29.[1] The master of every foreign-going ship, of which the crew has been engaged before a shipping-master, shall, before finally leaving India, sign and send to the nearest shipping-master a full and accurate statement, in a form sanctioned by the Governor General of India in Council, of every change which takes place in his crew before finally leaving India, and in default shall for each offence incur a penalty not exceeding fifty rupees; and such statement shall be admissible in evidence subject to all just exceptions.

To prevent infraction of Act, shipping-master may board vessels and muster seamen.

30. For the purpose of preventing any seamen from being shipped at any port in India contrary to the provisions of this Act, the shipping-master by himself or his deputy may enter at any time on board any ship upon which he shall have reason to believe that seamen have been shipped, and may muster and examine the several seamen employed therein; and any person who shall obstruct the said shipping-master or deputy in such duty shall be liable to a penalty not exceeding one hundred rupees.

Production of agreements and certificates in case of foreign-going ships.

31.[2] The following rules shall be observed with respect to the production of agreements and certificates of competency or service for foreign-going ships (that is to say)—

(1) The master of every foreign-going ship shall, on signing the agreement with his crew, produce to the shipping-master

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[1] *Cf.* the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104), ss. 155, 156, 157 and 158, respectively.

[2] *Cf* the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104), s. 161. The provisions of ss. 31 and 32 apply to engineers' certificates of competency granted under the Indian Steamships Act, 1884 (7 of 1884), s. 35. (For Act 7 of 1884, *see* Genl. Acts, Vol. III.

before whom the same is signed the certificates of competency or service which the said master and his mate are hereby required to possess; and upon such production being duly made, and the agreement being duly executed as hereby required, the shipping-master shall sign and give to the master a certificate to that effect.

(2) In the case of running agreements for foreign-going ships, the shipping-master shall, before the second and every subsequent voyage made after the first commencement of the agreement, sign and give to the master, on his complying with the provisions herein contained with respect to such agreements, and producing to the shipping-master the certificate of competency or service of any mate then first engaged by him, a certificate to that effect.

(3) The master of every foreign-going ship shall, before proceeding to sea, produce the certificate so to be given to him by the shipping-master as aforesaid to the Collector of Customs, or, if there be no Collector of Customs, to the officer whose duty it is to grant a port-clearance. No officer of customs or other officer shall clear any such ship outwards without such production; and, if any such ship attempts to go to sea without a clearance, any such officer may detain her until such certificate as aforesaid is produced.

(4) The master of every foreign-going ship shall, within forty-eight hours after the ship's arrival at her final port of destination in India, or upon the discharge of the crew, whichever first happens, deliver such agreement to a shipping-master at the place; and such shipping-master shall thereupon give to the master a certificate of such delivery; and no officer of Customs or other officer shall clear any foreign-going ship inwards without the production of such certificate.

And if the master of any foreign-going ship fails to deliver the agreement to a shipping-master at the time and in the manner hereby directed, he shall for every default incur a penalty not exceeding fifty rupees.

Rules as to production of agreements and certifi-

32. [1] The following rules shall be observed with respect to the production of [2] agreements and certificates of competency or service for

[1] *Cf.* the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104), s. 162, and *see* foot-note to s. 31, *supra*, p. 180.

[2] For forms of agreement for home-trade ships employing lascars or native seamen, *see* Ben. Stat. R. & O., Vol. I.

cates for home-trade ships.

home-trade ships of a burden exceeding three hundred tons (that is to say)—

(1) No such agreement shall extend beyond the next following thirtieth day of June or thirty-first day of December, or the first arrival of the ship at her final port of destination in India after such date, or the discharge of cargo consequent upon such arrival.

(2) The master or owner of every such ship shall, within twenty-one days after the thirtieth day of June and the thirty-first day of December in every year, or (if the ship is not at any port in India within twenty-one days after either the thirtieth day of June or the thirty-first day of December in any year) within forty-eight hours after her next arrival at any port in India, transmit or deliver to some shipping-master in India every agreement made within the six calendar months next preceding such days respectively, and shall also produce to the shipping-master the certificates of competency or service which the said master and his mate are hereby required to possess.

(3) The shipping-master shall thereupon give to the master or owner a certificate of such delivery and production; and no officer of Customs or other officer authorized to grant a port-clearance shall grant a clearance for any such ship without the production of such certificate; and, if any such ship attempts to go to sea without such clearance, any such officer may detain her until the said certificate is produced.

And if the agreement for any home-trade ship is not delivered or transmitted by the master or owner to a shipping-master at the time and in the manner hereby directed, such master or owner shall for every default incur a penalty not exceeding fifty rupees.

[1] Notwithstanding anything in this section or in any other enactment for the time being in force, the owner of home-trade ships or his agent may enter into time agreements in forms to be sanctioned by the Governor General in Council with individual seamen to serve in any one or more ships belonging to him, which agreements need not expire on either the thirtieth day of June or the thirty-first day of December.

Alterations to be void unless attested to

33.[2] Every erasure, interlineation or alteration in any such agreement with seamen as is required by this Act (except additions so made

[1] The last para. was inserted in s. 32 by the Indian Merchant Shipping Law Amendment Act, 1891 (6 of 1891), s. 3.

[2] *Cf.* s. 163 of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

as hereinbefore directed for shipping substitutes or persons engaged subsequently to the first departure of the ship) shall be wholly inoperative, unless proved to have been made with the consent of all the persons interested in such erasure, interlineation or alteration by the written attestation (if made in Her Majesty's dominions) of some shipping-master, Justice, officer of Customs or other public functionary, or (if made out of Her Majesty's dominions) of a British consular officer, or, where there is no such officer, of two respectable British merchants. have been made with the consent of all parties.

34.[1] The master shall, at the commencement of every voyage or engagement, cause a legible copy of the agreement, and, if necessary, a translation thereof in a language understood by the majority of the crew (omitting the signatures), to be placed or posted up in such part of the ship as to be accessible to the crew, and in default shall for each offence incur a penalty not exceeding fifty rupees. Copy of agreement to be made accessible to crew.

35.[1] Any seaman who has signed an agreement, and is afterwards discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, due compensation for the damage thereby caused to him, not exceeding one month's wages, and may, on adducing such evidence as the Court or Magistrate hearing the case deems satisfactory of his having been so improperly discharged as aforesaid, recover such compensation as if it were wages duly earned. Seamen discharged before voyage to have compensation.

Regulation of Advances.

36. No advance of wages shall be made or advance-note given to any person but the seaman himself; and no advance of wages shall be made or advance-note given for any greater sum than the amount of one month's wages, nor unless the agreement contains a stipulation for the same and an accurate statement of the amount thereof; and no advance-note shall be given to any seaman who signs the agreement before a shipping-master, unless in the presence of such shipping-master. Regulation of advances and advance-notes.

37. If any advance of wages is made or any advance-note given to any seaman in any such manner as to constitute a breach of any of the above provisions, the wages of such seaman shall be recoverable by him as if no such advance had been made or advance-note given and in the case of any advance-note so given, no person shall be sued thereon under the provisions hereinafter contained unless he was in person or by his agent a party to the irregular or improper manner of giving the same. Advances irregularly or improperly made not to be a discharge of wages.

[1] *Cf.* ss. 166 and 167, respectively, of the repealed Indian Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

ALLOTMENT OF WAGES.

Stipulations for allotment to be inserted in the agreement. Allotment-notes.

38. [1] All stipulations for the allotment of any part of the wages of a seaman during his absence, which are made at the commencement of the voyage, shall be inserted in the agreement, and shall state the amounts and times of the payments to be made. All allotment-notes shall be in forms sanctioned by the Local Government, and shall be made for the benefit only of a relative of the seaman or some member of his family to be named in the note, and shall be payable to the shipping-master on account of such relative of the seaman or member of his family. Such allotment shall not in any case exceed one-third of the wages of the seaman.

Owner, etc., to pay to shipping-master the sums allotted.

Suits on allotment-notes.

Evidence.

39. [1] The owner or any agent who has authorized the drawing of an allotment-note shall pay to the shipping-master on demand the sums allotted by the note when and as the same are made payable, unless the seaman is shown in manner hereinafter mentioned to have forfeited or ceased to be entitled to the wages out of which the allotment is to be paid; and, in the event of such sums not being paid to the shipping-master on demand, the shipping-master may sue for and recover them with costs. The seaman shall be presumed to be duly earning his wages unless the contrary is shown to the satisfaction of the Court or Magistrate, either by the official statement of the change in the crew caused by his absence made and signed by the master, as by this Act is required, or by a duly certified copy of some entry in the official log-book to the effect that he has died or left the ship, or by a credible letter from the master of the ship to the same effect, or by such other evidence, of whatever description, as the Court or Magistrate trying the case considers sufficient to show satisfactorily that the seaman has ceased to be entitled to the wages out of which the allotment is to be paid.

Receipts and payments by shipping-master on account of allotment-notes.

40. [1] The shipping-master, on receiving any such sum as aforesaid, shall pay it over to the person named in the allotment-note. All such receipts and payments shall be entered in a book, and all entries in the said book shall be authenticated by the signature of the shipping-master or his deputy; and the said book shall be at all times open to the inspection of the parties concerned.

DISCHARGE AND PAYMENT OF WAGES.

Discharge from foreign-going ships to be made before shipping master.

41. [2] All seamen discharged from any foreign-going ship at any port in India in whatever part of Her Majesty's dominions the ship is registered shall be discharged and receive their wages in the presence of a

[1] *Cf.* ss. 168 and 169, respectively, of the Indian Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

[2] *Cf.* s. 170 of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

shipping-master duly appointed under this Act, except in cases where some competent Court otherwise directs; and any master or owner of any such ship who discharges any seaman belonging thereto, or except as aforesaid pays his wages in any other manner, shall incur a penalty not exceeding one hundred rupees; and, in the case of home-trade ships of a burden exceeding three hundred tons, seamen may, if the owner or master so desires, be discharged and receive their wages in like manner.

Master to deliver account of wages.

42.[1] Every master shall, not less than twenty-four hours before paying off or discharging any seaman, deliver to him, or, if he is to be discharged before a shipping-master, to such shipping-master, a full and true account in a form [2] sanctioned by the Local Government, of his wages and of all deductions to be made therefrom on any account whatever, and in default shall for each offence incur a penalty not exceeding fifty rupees; and no deduction from the wages of any seaman (except in respect of any matter happening after such delivery) shall be allowed unless it is included in the account so delivered; and the master shall during the voyage enter the various matters in respect of which such deductions are made, with the amounts of the respective deductions as they occur, in a book to be kept for that purpose, and shall, if required, produce such book at the time of the payment of wages and also upon the hearing before any competent authority of any complaint or question relating to such payments.

On discharge masters to give seamen certificates of discharge, and return certificate of competency or service to mates.

43.[1] Upon the discharge of any seaman, or upon payment of his wages, the master shall sign and give him a certificate of his discharge, in a [3] form sanctioned by the Local Government, specifying the period of his service and the time and place of his discharge; and, if any master fails to sign and give to any such seaman such certificate of discharge, he shall for each such offence incur a penalty not exceeding one hundred rupees; and the master shall also, upon the discharge of every certificated mate whose certificate of competency or service has been delivered to and retained by him, return such certificate, and shall in default incur a penalty not exceeding two hundred rupees.

Shipping-master may decide questions which parties refer to him.

44.[1] Every shipping-master shall hear and decide any question whatever between a master or owner and any of his crew which both parties agree in writing to submit to him; and every award so made by him shall be binding on both parties, and shall in any legal proceeding which may be taken in the matter before any Court or Magistrate be deemed to be conclusive as to the rights of the parties; and any docu-

[1] *Cf.* ss. 171 to 173, respectively, of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

[2] For Notification as to form of account of wages of seamen to be used as an alternative form to that sanctioned in April, 1859—*see* Ben. Stat. R. & O., Vol. I, p. 3.

[3] For Notification of revised form for certificates of discharge in Bengal, *see* Ben. Stat. R. & O., Vol. I.

ment purporting to be such submission or award shall be *primâ facie* evidence thereof. An award made by a shipping-master under this section may be enforced by a Magistrate in the same manner as an order for the payment of wages made by such Magistrate under the provision of section 55.

How award may be enforced.

Master and others to produce ship's papers to shipping-masters, and give evidence.

45.[1] In any proceeding relating to the wages, claims or discharge of any seaman carried on before any shipping-master under the provisions of this Act, such shipping-master may call upon the owner or his agent, or upon the master, or any mate or other member of the crew, to produce any log-books, papers or other documents in their respective possession or power relating to any matter in question in such proceeding, and may call before him and examine any of such persons being then at or near the place on any such matter; and every owner, agent, master, mate, or other member of the crew who, when called upon by the shipping-master, does not produce any such paper or document as aforesaid if in his possession or power, or does not appear and give evidence, shall, unless he shows some reasonable excuse for such default, for each such offence incur a penalty not exceeding fifty rupees.

Settlement of wages.

46.[1] The following rules shall be observed with respect to the settlement of wages (that is to say)—

Release to be signed before and attested by the shipping-master;

(1) Upon the completion before a shipping-master of any discharge and settlement, the master or owner and each seaman shall respectively, in the presence of the shipping-master, sign, in a form sanctioned by the Local Government, a mutual release of all claims in respect of the past voyage or engagement, and the shipping-master shall also sign and attest the release and shall retain the same.

to be a discharge;

(2) Such release so signed and attested shall operate as a mutual discharge and settlement of all demands between the parties thereto in respect of the past voyage or engagement.

and to be evidence.

(3) A copy of such release, certified under the hand of such shipping-master to be a true copy, shall be given by him to any party thereto requiring the same, and such copy shall be receivable in evidence upon any future question touching such claims as aforesaid, and shall have all the effect of the original of which it purports to be a copy.

No other receipt to be a discharge.

(4) In cases in which discharge and settlement before a shipping-master are hereby required, no payment, receipt, settle-

[1] *Cf.* ss. 174 and 175, respectively, of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

ment or discharge otherwise made shall operate or be admitted as evidence of the release or satisfaction of any claim.

Voucher to be given to master and to be evidence.

(5) Upon any payment being made by a master before a shipping-master, the shipping-master shall, if required, sign and give to such master a statement of the whole amount so paid; and such statement shall as between the master and his employer be received as evidence that he has made the payments therein mentioned.

Legal Rights to Wages.

Right to wages and provisions when to begin.

47.[1] A seaman's right to wages and provisions shall be taken to commence either at the time at which he commences work, or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

Seamen not to give up certain rights.

48.[1] No seaman shall by any agreement forfeit his lien upon the ship or be deprived of any remedy for the recovery of his wages to which he would otherwise have been entitled; and every stipulation in any agreement inconsistent with any provision of this Act, and every stipulation by which any seaman consents to abandon his rights to wages in the case of the loss of the ship or to abandon any right which he may have or obtain in the nature of salvage, shall be wholly inoperative.

Wages not to be dependent on the earning of freight.

49.[1] No right to wages shall be dependent on the earning of freight; and every seaman and apprentice, who would be entitled to demand and recover any wages if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to claim and recover the same notwithstanding that freight has not been earned; but, in all cases of wreck or loss of the ship, proof that he has not exerted himself to the utmost to save the ship, cargo and stores shall bar his claim.

In case of death, such wages to be paid as after mentioned.

50.[1] If any seaman or apprentice to whom wages are due under the last preceding section dies before the same are paid, they shall be paid and applied in the manner hereinafter specified with regard to the wages of seamen who die during a voyage.

Rights to wages in case of termination of service by wreck or illness.

51.[1] In cases where the service of any seaman terminates before the period contemplated in the agreement by reason of the wreck or loss of the ship, and also in cases where such service terminates before such period as aforesaid by reason of his being left on shore at any place abroad under a certificate of his unfitness or inability to proceed on the

[1] *Cf.* ss. 181 to 185, respectively, of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

voyage granted under the provisions of the [1] Merchant Shipping Act, 1854, such seamen shall be entitled to wages for the time of service prior to such termination as aforesaid, but not for any further period. 17 & 18 Vict., c. 104.

Wages not to accrue during refusal to work or imprisonment.

52.[2] No seaman or apprentice shall be entitled to wages for any period during which he unlawfully refuses or neglects to work when required, whether before or after the time fixed by the agreement for his beginning work; nor, unless the Court or Magistrate hearing the case otherwise directs, for any period during which he is lawfully imprisoned for any offence committed by him.

Period within which wages are to be paid.

53.[2] The master or owner of every ship shall pay to every seaman his wages within three days after the cargo has been delivered, or within five days after the seaman's discharge, whichever first happens; and the seaman shall at the time of his discharge be entitled to be paid on account a sum equal to one-fourth part of the balance due to him; and every master or owner who neglects or refuses to make payment in manner aforesaid without sufficient cause shall pay to the seaman a sum not exceeding the amount of two days' pay for each of the days not exceeding ten days during which payment is delayed beyond the respective periods aforesaid; and such sum shall be recoverable as wages.

Sum in current coin of India recoverable by seaman under agreement expressing his wages, etc., to be payable in British currency.

54.[3] When any moneys are payable in India to any seaman or apprentice for wages or otherwise under any agreement wherein such moneys are expressed to be payable in British currency, the seaman or apprentice shall be entitled to demand and recover in the current coin of India the amount due to him estimated according to the rate of exchange for the time being fixed by the Secretary of State for India in Council, with the concurrence of the Lords Commissioners of Her Majesty's Treasury, for the adjustment of financial transactions between the Imperial and the Indian Governments.

Mode of recovering Wages.

Seaman may sue summarily before any Magistrate for wages not exceeding 500 rupees.

Order of Magistrate final.

55.[2] Any seaman or apprentice, or any person duly authorized on his behalf, may sue, in a summary manner, before any Magistrate acting in or near to the place at which the service has terminated or at which the seaman or apprentice has been discharged, or at which any person upon whom the claim is made is or resides, for any amount of wages due to such seaman or apprentice not exceeding five hundred rupees. Every order made by such Magistrate in the matter shall be final.

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[1] *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

[2] *Cf.* ss. 186, 187 and 188, respectively, of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

[3] This section was substituted for the original section by the Indian Merchant Seamen's Act, 1876 (13 of 1876), s. 10, Genl. Acts, Vol. II.

Levy of wages by distress.

56. When an order for the payment of wages is made by a Magistrate under the last preceding section, and the wages are not paid at the time and in the manner prescribed, the sum mentioned in the order, with such further sum as may be thereby awarded for costs, shall be levied by distress and sale of the goods and chattels of the person directed to pay the same under a warrant to be issued for that purpose by the Magistrate.

No suit for wages under 500 rupees to be instituted in Admiralty Court, etc., except in certain cases.

57.[1] No suit or proceeding for the recovery of wages under the sum of five hundred rupees shall be instituted by or on behalf of any seaman or apprentice in any Court of admiralty or vice-admiralty or in any Court of civil judicature other than the Court of Small Causes, where such Court exists, unless the owner of the ship is adjudged bankrupt or declared insolvent, or unless the ship is under arrest or is sold by the authority of any such Court, or unless the Magistrate, acting under the authority of this Act, refers the case to be adjudged by such Court.

Master to have same remedies for wages as seamen.

58.[1] Every master of a ship shall, so far as the case permits, have the same rights, liens and remedies for the recovery of his wages which by this Act or by any law or custom any seaman, not being a master, has for the recovery of his wages; and if, in any proceeding in any Court of admiralty or vice-admiralty touching the claim of a master to wages, any right of set-off or counter-claim is set up, it shall be lawful for such Court to enter into and adjudicate upon all questions, and to settle all accounts then arising or outstanding and unsettled between the parties to the proceeding, and to direct payment of any balance which is found to be due.

Wages and Effects of Deceased Seamen.

Master to take charge of effects of deceased seamen.

59.[1] Whenever a seaman or apprentice, on a voyage which is to terminate at any port in India, dies during such voyage, the master shall take charge of all money, clothes and effects which he leaves on board, and shall enter in the official log-book a statement of the amount of money and a description of the effects left by the deceased, and, in case of a sale of such effects, the sum received for each article sold.

Effects and wages to be paid to shipping-master with full accounts.

60.[1] The master shall, within forty-eight hours after his arrival at his port of destination in India, deliver any such effects as aforesaid, and pay any money which he has taken charge of or received, and also the wages due to deceased, to the shipping-master at such port, and shall give to such shipping-master an account of the effects, money and wages so to be delivered and paid; and no deductions claimed in such

[1] *Cf.* ss. 189, 191, 194 and 195, respectively, of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

account shall be allowed unless verified, if there is an official log-book, by the entry therein hereinbefore required, and also by such other vouchers (if any) as may be reasonably required by the shipping-master to whom the account is rendered.

Penalties for not taking charge of or accounting for such moneys and effects.

61.[1] If the master fails to take such charge of the money or other effects of a seaman or apprentice dying during a voyage, or to make such entries in respect thereof, or to make such payment or delivery, or to give such account as hereinbefore respectively directed, he shall be accountable for the money, wages and effects of the seaman or apprentice to the shipping-master as aforesaid, and shall pay and deliver the same accordingly; and such master shall in addition incur a penalty not exceeding treble the value of the money or effects, or if such value is not ascertained, not exceeding five hundred rupees. All money, wages and effects of any seaman or apprentice dying during a voyage shall be recoverable in the same Courts and by the same modes of proceeding by which seamen are hereby enabled to recover wages due to them.

Wages and property of deceased seamen may be paid without probate.

62.[1] When money or effects left by or due to any deceased seaman or apprentice are paid or delivered to a shipping-master, then, subject to such deductions for expenses incurred in respect of the seaman or apprentice, or of his said money and effects as the shipping-master thinks proper to allow, the shipping-master may pay and deliver the said money and effects to any claimants who can prove themselves to the satisfaction of the said shipping-master to be entitled thereto, and the said shipping-master shall be thereby discharged from all further liability in respect of the money and effects so paid and delivered; or, if he think fit so to do, the shipping-master may require probate or letters of administration or a certificate under [2][the Succession Certificate Act, 1889,] to be taken out, and thereupon pay and deliver the said money and effects to the legal representative of the deceased. VII of 1889.

Disposal of wages or effects of deceased seamen not claimed within one year.

63. In cases of wages or effects of deceased seamen or apprentices received by any shipping-master to which no claim is substantiated within one year from the receipt thereof by such shipping-master, it shall be the duty of the shipping-master to cause such effects to be sold and to pay the proceeds of the sale and the unclaimed wages into the public treasury.

If subsequent claim be made thereto.

If any subsequent claim is made to such money and is established to the satisfaction of the shipping-master, the amount or so much as shall appear to be due to the claimant shall be paid out of the public treasury.

If the claim is not established to the satisfaction of the shipping-master, the claimant may apply by petition in a summary way to the

[1] *Cf.* ss. 196 and 199, respectively, of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

[2] These words and figures were substituted for the words and figures Act XX of 1841 (*for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*) by Amending Act, 1891 (12 of 1891), Genl. Acts, Vol. IV.

Supreme Court of Judicature of the presidency;[1] * * * and such Court, after taking evidence, either orally or on affidavit, shall make such order on the petition as shall seem just:

Provided that, after the expiration of six years from the receipt of such wages or effects by the shipping-master, no such claim shall be entertained without the sanction of the Local Government. Proviso.

PROVISIONS, HEALTH AND ACCOMMODATION.

64.[2] Any three or more of the crew of any ship registered at, trading with or being at any port or place in India, may complain to any shipping-master or other officer duly appointed in this behalf by the Local Government that the provisions or water for the use of the crew are at any time of bad quality, unfit for use or deficient in quantity; and such officer may thereupon examine the said provisions or water or cause them to be examined; and if on examination, such provisions or water are found to be of bad quality and unfit for use or to be deficient in quantity, the person making such examination shall signify the same in writing to the master of the ship; Survey of provisions and water on complaint made.

and if such master does not thereupon provide other proper provisions or water in lieu of any so signified to be of a bad quality and unfit for use, or does not procure the requisite quantity of any so signified to be insufficient in quantity, or uses any provisions or water which have been so signified as aforesaid to be of a bad quality and unfit for use, he shall in every such case incur a penalty not exceeding two hundred rupees;

and, upon every such examination as aforesaid, the officers making or directing the same shall enter a statement of the result of the examination in the official log, and shall send a report thereof to the shipping-master, and such report, if produced out of the custody of such shipping-master, shall be received in evidence in any legal proceeding.

65.[2] If the officer to whom any such complaint as last aforesaid is made certifies in such statement as aforesaid that there was no reasonable ground for such complaint, each of the parties so complaining shall be liable to forfeit to the owner out of his wages a sum not exceeding one week's wages. Forfeiture for frivolous complaint.

66.[2] In the following cases (that is to say)— Allowance for short or bad provisions.

1.—If during a voyage the allowance of any of the provisions

[1] The words " or in any station of the Settlement of Prince of Wales' Island, Singapore and Malacca, to the Court of Judicature there " were repealed by the Repealing Act, 1876 (12 of 1876).

[2] *Cf.* ss. 221, 222 and 223, respectively, of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

which any seaman has by his agreement stipulated for, is reduced (except in accordance with any regulations for reduction by way of punishment contained in the agreement, and also except for any time during which such seaman wilfully and without sufficient cause refuses or neglects to perform his duty, or is lawfully under confinement for misconduct, either on board or on shore);

2.—If it is shown that any of such provisions are or have during the voyage been bad in quality and unfit for use;

the seaman shall receive by way of compensation for such reduction or bad quality, according to the time of its continuance, the following sums, to be paid to him in addition to and to be recoverable as wages (that is to say)—

(1) If his allowance is reduced by any quantity not exceeding one-third of the quantity specified in the agreement, a sum not exceeding three annas in the case of a European seaman or other person shipped on the same footing as a European seaman, or one anna in the case of a lascar or native seaman.

(2) If his allowance is reduced by more than one-third of such quantity, six annas in the case of a European seaman or other person shipped on the same footing as a European seaman, or two annas in the case of a lascar or native seaman.

(3) In respect of such bad quality as aforesaid, a sum not exceeding eight annas in the case of a European seaman or other person shipped on the same footing as a European seaman, or three annas in the case of a lascar or native seaman.

But if it is shown to the satisfaction of the Court or Magistrate trying the case that any provisions, the allowance of which has been reduced, could not be procured, or supplied in proper quantities, and that proper and equivalent substitutes were supplied in lieu thereof, such Court or Magistrate shall take such circumstances into consideration, and shall modify or refuse compensation as the justice of the case may require.

Medicines, etc., to be provided and kept on board certain ships.

67. All foreign-going ships and all home-trade ships of a burden exceeding three hundred tons shall have always on board a sufficient supply of medicines and appliances, suitable for diseases and accidents likely to happen on sea voyages, according to such scale [1] as shall be from time to time issued by the Local Government with the approval of

[1] For scale prescribed in the case of ships leaving—
(1) Burma ports, *see* Bur. R. M., Vol. I.
(2) Madras ports, *see* Mad. R. & O., Vol. I, p. 12.

the Governor General of India in Council, and published at Calcutta, Madras and Bombay in the Government Gazettes [1] * * and, in default thereof, the owner or master of every such ship shall be liable to a penalty not exceeding two hundred rupees: Provided, however, that this section shall not apply to ships navigating from the United Kingdom and coming within the provisions of [2] section 224 of the Merchant Shipping Act, 1854.

Proviso.

17 & 18 Vict., c. 104.

68.[3] Every master shall keep on board proper weights and measures for the purposes of determining the quantities of the several provisions and articles served out, and shall allow the same to be used at the time of serving out such provisions and articles in the presence of a witness whenever any dispute arises about such quantities, and in default shall for every offence incur a penalty not exceeding one hundred rupees.

Masters to keep weights and measures on board.

69.[3] Whenever the master or any seaman of any ship registered at any place in India shall receive any hurt or injury in the service of the vessel, the expense of providing the necessary surgical and medical advice and attendance with medicines, and of his subsistence until he shall be cured or shall be brought back to the port from which he was shipped or other port agreed upon, shall be defrayed, with the cost of his conveyance to such port by the owner of the vessel without any deduction on that account from the wages of such master, officer or seaman; and, if paid by himself, may be recovered as part of his wages; and, if paid or allowed out of any moneys forming part of the revenues of India shall be a charge upon the ship, and may be recovered with full costs of suit by the Secretary of State in Council.

Expense of medical attendance and subsistence in case of illness how to be defrayed.

70.[3] A place or places of shelter shall be provided below a well-caulked and substantial deck for the men engaged under this Act; such place or places shall be so arranged as to allow for the men the following spaces:—

Place to be appropriated.

1.—For each European seaman or apprentice or other person shipped on the same footing as a European seaman [4] [ten superficial feet] if the place be not less than six feet in height from deck to deck; or [4] [sixty cubic feet] if the height from deck to deck be less than six feet.

to European seamen;

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[1] The words "and in the Straits Settlements in such manner as the Governor shall notify" were repealed by the Repealing Act, 1876 (12 of 1876).

[2] *See* now s. 200 of the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), Coll. Stats., Ind., Vol. II.

[3] *Cf.* ss. 225, 228 and 231, respectively, of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

[4] These words were substituted for the words "nine superficial feet," and "fifty-four cubic feet," respectively, by the Indian Merchant Seamen's Act, 1876 (13 of 1876), s. 9, Genl. Acts, Vol. II.

to lascars or native seamen.

2.—For each lascar or native seaman or other person shipped on the same footing as a lascar [1] [six superficial] [2] [and thirty-six cubic] feet, and if the place allotted be under the top-gallant forecastle, such forecastle deck shall be not less than four feet six inches above the one below it.

Place to be kept clear.

Penalty if place be not properly constructed.

Penalty for not keeping space clear.

Every such place shall be kept free from stores or goods of any kind, not being the personal property of the crew in use during the voyage; and if any such place in any ship is not in the whole sufficiently large to give such space for each seaman and apprentice as hereinbefore required, or is not properly caulked and in all other respects securely and properly constructed and well ventilated, the owner shall, for every such failure to comply with the provisions of this section, incur a penalty not exceeding two hundred rupees; and if any such space as aforesaid is not kept free from goods and stores as aforesaid, the master shall, for every such failure to comply with the provisions of this section, incur a penalty not exceeding one hundred rupees.

Shipping-master, etc., may enter on board any ship and inspect provisions, etc.

71. The shipping-master at any port in India, by himself or his deputy, may enter at any time on board of any ship upon which seamen have been shipped at such port, and inspect the provisions and water provided for the use of the crew, and the medicines and appliances and the accommodation for seamen prescribed by this Act or by the Merchant Shipping Act, 1854.[3] 17 & 18 Vict. c. 104.

Procedure if provisions, etc., are found to be bad.

If on inspection the provisions or water are found to be of bad quality and unfit for use, or to be deficient in quantity, the shipping-master shall proceed as provided in section 64 of this Act, and the penalty prescribed in the said section shall be incurred by any default of the master of the ship in respect of such provisions or water.

Power of making Complaints.

Seamen to be allowed to go ashore to make complaint to a Justice.

72.[4] If any seaman or apprentice, whilst on board any ship, states to the master that he desires to make complaint to a Magistrate against the master or any of the crew, the said master shall, if the ship is then at a place where there is a Magistrate, so soon as the service of the ship will permit, and if the ship is not then at such a place, so soon after her first arrival at such a place as the service of the ship will permit, allow such seaman to go ashore, or send him ashore in proper custody, so that he may be enabled to make such complaint, and shall, in default, incur a penalty not exceeding one hundred rupees.

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[1] These words were substituted for the words "four superficial feet" by the Indian Merchant Seamen's Act, 1876 (13 of 1876), s. 9, Genl. Acts, Vol. II.

[2] These words were inserted by s. 9 of Act 13 of 1876.

[3] *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), Coll. Stats., Ind., Vol. II.

[4] *Cf.* s. 232 of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

Protection of Seamen from Imposition.

Sale of and charge upon wages to be invalid.

73.[1] No wages due or accruing to any seamen or apprentice shall be subject to attachment from any Court; and every payment of wages to a seaman shall be valid in law, notwithstanding any previous sale or assignment of such wages or of any incumbrance thereon; and no assignment or sale of such wages or of salvage made prior to the accruing thereof shall bind the party making the same; and no power-of-attorney or authority for the receipt of any such wages or salvage shall be irrevocable.

Debt exceeding three rupees when recoverable.

74.[1] No debt exceeding in amount three rupees incurred by any seaman after he has engaged to serve shall be recoverable until the service agreed for is concluded.

Penalty for over charges by lodging-house-keepers.

75.[1] If any person demands or receives from any seaman or apprentice payment in respect of his board or lodging in the house of such person for a longer period than such seaman or apprentice has actually resided or boarded therein, he shall incur a penalty not exceeding one hundred rupees.

Penalty for detaining seamen's effects.

76.[1] If any person receives or takes into his possession or under his control any moneys, documents or effects of any seaman or apprentice, and does not return the same or pay the value thereof when required by such seaman or apprentice, subject to such deduction as may be justly due to him from such seaman or apprentice in respect of board or lodging or otherwise, or absconds therewith, he shall incur a penalty not exceeding one hundred rupees; and any Magistrate may, besides inflicting such penalty by summary order, direct the amount or value of such moneys, documents or effects, subject to such deduction as aforesaid, to be forthwith paid to such seaman or apprentice.

Persons not to go on board before the final arrival of ship, without permission.

77.[1] Every person who, not being in the service of Her Majesty and not being duly authorized by law for the purpose, goes on board any ship about to arrive at the place of her destination before her actual arrival at the place of her discharge, without the permission of the master, shall for every such offence incur a penalty not exceeding two hundred rupees; and the master or person in charge of such ship may take any such person so going on board as aforesaid into custody, and deliver him up forthwith to any police-officer, to be by him taken before a Magistrate to be dealt with according to the provisions of this Act.

Penalty for solicitations by lodging-house-keepers.

78.[1] If, within twenty-four hours after the arrival of any ship at any port in India, any person then being on board such ship solicits any seaman to become a lodger at the house of any person letting lodgings for

[1] *Cf.* ss. 233, 234 235, 236. 237 and 238, respectively of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

hire, or takes out of such ship any effects of any seaman, except under his personal direction and with the permission of the master, he shall for every such offence incur a penalty not exceeding fifty rupees.

DISCIPLINE.

Penalty for misconduct endangering ship, or life or limb.

79.[1] Any master of, or any seaman or apprentice belonging to, any ship registered at, trading with or being at any port or place in India, who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction or serious damage of such ship, or tending immediately to endanger the life or limb of any person belonging to or on board of such ship, or who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for preserving such ship from immediate loss, destruction or serious damage, or for preserving any person belonging to or on board of such ship from immediate danger to life or limb, shall for every such offence be [2][punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to two years, or with both.]

Admiralty Court in India may in certain cases remove master and appoint a new master

80.[1] Any Court having Admiralty jurisdiction in India may, upon application by the owner of any ship being within the jurisdiction of such Court, or by the part owner or consignee, or by the agent of the owner, or by any certificated mate, or by one-third or more of the crew of such ship, and upon proof on oath to the satisfaction of such Court that the removal of the master of such ship is necessary, remove him accordingly; and may also, with the consent of the owner or his agent, or the consignee of the ship, or if there is no owner or agent of the owner or consignee of the ship within the jurisdiction of the Court, then without such consent, appoint a new master in his stead, and may also make such order and may require such security in respect of costs in the matter as it thinks fit.

81.[3] [*Power to investigate cases of alleged incompetency and misconduct.*] *Rep. by Act XV of 1863.*

82.[3] [*Local Government may cancel or suspend certificates in certain cases.*] *Rep. by Act XV of 1863.*

Offences of seamen and

83.[4] Whenever any seaman [5] who has been lawfully engaged, or any

[1] *Cf.* ss. 239 and 240 respectively of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104). The powers conferred by section 80 may, where there is no Court having Admiralty jurisdiction, be exercised by the principal Court of Ordinary Criminal Jurisdiction. *See* the Indian Merchant Shipping Act, 1883 (5 of 1883), s. 4 (*2*).

[2] These words were substituted for the words " liable to imprisonment, with or without hard labour, for a term not exceeding two years " by the Indian Merchant Shipping Act, 1883 (5 of 1883), s. 36, Genl. Acts, Vol. III.

[3] The power conferred by these repealed sections has since been re-imposed by the Indian Merchant Shipping Act, 1883 (5 of 1883), *see* Ch. III, Genl. Acts, Vol. III.

[4] *Cf.* the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104), s. 245.

[5] For definition of the expression " seamen," *see* s. 118, *infra*.

apprentice to the sea service, commits any of the following offences, he shall be liable to be punished summarily as follows (that is to say)— apprentices, and their punishments.

(1) For desertion he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour, and also to forfeit all or any part of the clothes and effects he leaves on board, and all or any part of the wages or emoluments which he has then earned, and also, if such desertion takes place at any port or place not in India, at the discretion of the Court, to forfeit all or any part of the wages or emoluments he may earn in any other ship in which he may be employed until his next return to any port or place in India, and to satisfy any excess of wages paid by the master or owner of the ship from which he deserts to any substitute engaged in his place at a higher rate of wages than the rate stipulated to be paid to him. Desertion.

(2) For neglecting or refusing, without reasonable cause, to join his ship or to proceed to sea in his ship, or for absence without leave at any time within twenty-four hours of the ship's sailing from any port either at the commencement or during the progress of any voyage, or for absence at any time without leave and without sufficient reason from his ship or from his duty not amounting to desertion or not treated as such by the master, he shall be liable to imprisonment for any period not exceeding ten weeks, with or without hard labour, and also, at the discretion of the Court, to forfeit out of his wages a sum not exceeding the amount of two days' pay and in addition for every twenty-four hours of absence either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute. Neglecting or refusing to join, or to proceed to sea absence within twenty-four hours before sailing and absence without leave.

(3) For quitting the ship without leave after her arrival at her port of delivery and before she is placed in security he shall be liable to forfeit out of his wages a sum not exceeding one month's pay. Quitting without leave before ship is secured.

(4) For wilful disobedience to any lawful command he shall be liable to imprisonment for any period not exceeding four weeks, with or without hard labour, and also, at the discretion of the Court, to forfeit out of his wages a sum not exceeding two days' pay. Act of disobedience.

(5) For continued wilful disobedience to lawful commands, or continued wilful neglect of duty, he shall be liable to imprisonment for any period not exceeding twelve weeks, Continued disobedience.

with or without hard labour, and also, at the discretion of the Court, to forfeit for every twenty-four hours continuance of such disobedience or neglect either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute.

Assault on officers.

(6) For assaulting any master or mate he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour.

Combining to disobey.

(7) For combining with any other or others of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the ship or the progress of the voyage, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour.

Wilful damage and embezzlement.

(8) For wilfully damaging the ship, or embezzling, or wilfully damaging any of her stores or cargo, he shall be liable to forfeit out of his wages a sum equal in amount to the loss thereby sustained, and also, at the discretion of the Court, to imprisonment for any period not exceeding twelve weeks, with or without hard labour.

Act of smuggling causing loss to owner.

(9) For any act of smuggling of which he is convicted, and whereby loss or damage is occasioned to the master or owner, he shall be liable to pay such master or owner such a sum as is sufficient to re-imburse the master or owner for such loss or damage; and the whole or a proportionate part of his wages may be retained in satisfaction or on account of such liability, without prejudice to any further remedy.

Entry of offences to be made in official log, and to be read over, or a copy given to the offender, and his reply, if any, to be also entered.

84.[1] Upon the commission of any of the offences enumerated in the last preceding section, an entry thereof shall be made in the official log-book, and shall be signed by the master and also by the mate or one of the crew; and the offender, if still in the ship, shall, before the next subsequent arrival of the ship at any port, or if she is at the time in port before her departure therefrom, either be furnished with a copy of such entry or have the same read over distinctly and audibly to him, and may thereupon make such reply thereto as he thinks fit; and a statement that a copy of the said entry has been so furnished, or that the same has been so read over as aforesaid, and the reply (if any) made by the offender shall likewise be entered and signed in manner aforesaid; and in any subsequent legal proceeding the entries hereinbefore

[1] *Cf.* s. 244 of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

required shall, if practicable, be produced or proved, and in default of such production of proof the Court hearing the case may, at its discretion, refuse to receive evidence of the offence.

Seamen whom masters of ships are compelled to convey, and persons going in ships without leave, to be subject to penalties for breach of discipline.

85.[1] Every seafaring person whom the master of any ship is, under the authority of this Act or any law, compelled to take on board and convey, and every person who goes to sea in any ship without the consent of the master or owner or other person entitled to give such consent shall, so long as he remains in such ship, be subject to the same laws and regulations for preserving discipline, and to the same penalties and punishments for offences constituting or tending to a breach of discipline, to which he would be subject if he were a member of the crew and had signed the agreement.

Master or owner may apprehend deserters without warrant.

86.[1] Whenever either at the commencement or during the progress of any voyage, any seaman or apprentice neglects or refuses to join, or deserts from or refuses to proceed to sea in any ship in which he is duly engaged to serve, or is found otherwise absenting himself therefrom without leave, the master or any mate, or the owner, ship's husband or consignee may, with or without the assistance of police-officers, who are hereby directed to give the same if required, apprehend him without first procuring a warrant; and thereupon in any case, and shall, in case he so requires and it is practicable, convey him before some Court capable of taking cognizance of the matter, to be dealt with according to law; and may, for the purpose of conveying him before such Court, detain him in custody for a period not exceeding twenty-four hours or such shorter time as may be necessary, or may, if he does not so require, or if there is no such Court at or near the place, at once convey him on board;

and if any such apprehension appears to the Court before which the case is brought to have been made on improper or on insufficient grounds, the master, mate, owner, ship's husband or consignee who makes the same or causes the same to be made, shall incur a penalty not exceeding two hundred rupees; but such penalty, if inflicted, shall be a bar to any action for false imprisonment in respect of such apprehension.

Deserters may be sent on board in lieu of being imprisoned.

87.[1] Whenever any seaman or apprentice is brought before any Court on the ground of his having neglected or refused to join or to proceed to sea in any ship in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, such Court may, if the master or the owner or his agent so requires instead

[1] *Cf.* ss. 245, 246 and 247, respectively, of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

of committing the offender to prison, cause him to be conveyed on board for the purpose of proceeding on the voyage, or deliver him to the master or any mate of the ship, or the owner or his agent, to be by them so conveyed, and may in such case order any costs and expenses properly incurred by or on behalf of the master or owner by reason of the offence to be paid by the offender, and if necessary to be deducted from any wages which he has then earned, or which by virtue of his then existing engagement he may afterwards earn.

Seamen imprisoned for desertion or breach of discipline may be sent on board. Before termination of sentence.

88.[1] If any seaman or apprentice is imprisoned on the ground of his having neglected or refused to join or to proceed to sea in any ship in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, or of his having committed any other breach of discipline, and if during such imprisonment and before his engagement is at an end his services are required on board his ship, any Magistrate may, at the request of the master or of the owner or his agent, cause such seaman or apprentice to be conveyed on board his said ship for the purpose of proceeding on the voyage, or to be delivered to the master or any mate of the ship or to the owner or his agent to be by them so conveyed, notwithstanding that the termination of the period for which he was sentenced to imprisonment has not arrived.

Entries and certificates of desertion abroad to be copied, sent home and admitted in evidence.

89.[1] In all cases of desertion from any ship registered at a port or place in India while such ship is at any place out of India, the master shall produce the entry of such desertion in the official log-book to the person or persons required by the [2] Merchant Shipping Act, 1854, to endorse on the agreement a certificate of such desertion; and such person or persons shall thereupon make and certify a copy of such entry and also a copy of the said certificate of desertion; 17 & 18 Vict c. 104.

the master shall forthwith transmit such copies to the shipping-master at the port where such seaman was engaged, who shall, if required, cause the same to be produced in any legal proceeding; and such copies, if purporting to be so made and certified as aforesaid, shall in any legal proceeding relating to such desertion be received as evidence of the entries therein appearing.

Facilities for proving desertion so far as concerns forfeiture of wages.

90.[1] Whenever a question arises whether the wages of any seaman or apprentice are forfeited for desertion, it shall be sufficient for the party insisting on the forfeiture to show that such seaman or apprentice was duly engaged in, or that he belonged to, the ship from which he is alleged to have deserted, and that he quitted such ship before the completion of the voyage or engagement, or if such voyage was to terminate

[1] *Cf.* ss. 248, 249 and 250, respectively, of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).
[2] *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

at any port or place in India, and the ship has not returned, that he is absent from her, and that an entry of the desertion has been duly made in the official log-book; and thereupon the desertion shall, so far as relates to any forfeiture of wages or emoluments under the provisions hereinbefore contained, be deemed to be proved, unless the seaman or apprentice can produce a proper certificate of discharge or can otherwise show to the satisfaction of the Court that he had sufficient reasons for leaving his ship.

Costs of procuring imprisonment may, to the extent of thirty rupees, be deducted from wages.

91.[1] Whenever in any proceeding relating to seamen's wages it is shown that any seaman or apprentice has in the course of the voyage been convicted of any offence by any competent tribunal and rightfully punished therefor by imprisonment or otherwise, the Court hearing the case may direct a part of the wages due to such seaman, not exceeding thirty rupees, to be applied in re-imbursing any costs properly incurred by the master in procuring such conviction and punishment.

Amount of forfeiture how to be ascertained when seamen contract for the voyage.

92.[1] Whenever any seaman contracts for wages by the voyage or by the run or by the share, and not by the month or other stated period of time, the amount of forfeiture to be incurred under this Act shall be taken to be an amount bearing the same proportion to the whole wages or share as the period hereinbefore mentioned in fixing the amount of such forfeiture (as the case may be) bears to the whole time spent in the voyage; and if the whole time spent in the voyage does not exceed the period for which the pay is to be forfeited, the forfeiture shall extend to the whole wages or share.

Application of forfeitures.

93.[1] All clothes, effects, wages and emoluments which under the provisions hereinbefore contained are forfeited for desertion shall be applied in the first instance in or towards the re-imbursement of the expenses occasioned by such desertion to the master or owner of the ship from which the desertion has taken place, and may, if earned subsequently to the desertion, be recovered by such master or by the owner or his agent in the same manner as the deserter might have recovered the same if they had not been forfeited; and in any legal proceeding relating to such wages the Court may order the same to be paid accordingly; and, subject to such re-imbursement, the same shall be paid into the public treasury and carried to the account of Government; and, in all other cases of forfeiture of wages under the provisions hereinbefore contained, the forfeiture shall, in the absence of any specific directions to the contrary, be for the benefit of the master or owner by whom the wages are payable.

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[1] *Cf.* ss. 251, 252 and 253, respectively, of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

Question of forfeitures may be decided in suits for wages.

94.[1] Any question concerning the forfeiture of or deductions from the wages of any seaman or apprentice may be determined in any proceeding lawfully instituted with respect to such wages, notwithstanding that the offence in respect of which such question arises, though hereby made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceeding.

Penalty for false statement as to last ship or name.

95.[1] If any seaman on or before being engaged wilfully and fraudulently makes a false statement of the name of his last ship or last alleged ship, or wilfully and fraudulently makes a false statement of his own name, he shall incur a penalty not exceeding fifty rupees, and such penalty may be deducted from any wages he may earn by virtue of such engagement as aforesaid, and shall, subject to re-imbursement of the loss and expenses (if any) occasioned by any previous desertion, be paid and applied in the same manner as other penalties payable under this Act.

Fines to be deducted from wages and paid to shipping-master.

96.[1] Whenever any seaman commits an act of misconduct for which his agreement imposes a fine, and which it is intended to punish by enforcing such fine, an entry thereof shall be made in the official log-book, and a copy of such entry shall be furnished or the same shall be read over to the offender, and an entry of such reading over, and of the reply (if any) made by the offender, shall be made in the manner and subject to the conditions hereinbefore specified with respect to the offences against discipline specified in and punishable under this Act;

and such fine shall be deducted and paid over as follows (that is to say), if the offender is discharged at any port or place in India, and the offence, and such entries in respect thereof as aforesaid, are proved, in the case of a foreign-going ship to the satisfaction of the shipping-master before whom the offender is discharged, and in the case of a home-trade ship to the satisfaction of the shipping-master at or nearest to the place at which the crew is discharged, the master or owner shall deduct such fine from the wages of the offender and pay the same over to such shipping-master;

And, if before the final discharge of the crew in India, any such offender as aforesaid enters into any of Her Majesty's ships or is discharged at any place not in India, and the offence and such entries as aforesaid are proved to the satisfaction of the officer in command of the ship into which he so enters, or of the consular officer, officer of Customs or other person by whose sanction he is so discharged, the fine shall thereupon be deducted as aforesaid, and an entry of such deduction shall then be made in the official log-book (if any) and signed by such officer or other person, and on the return of the ship to India, the master or

[1] *Cf.* ss. 254, 255 and 256 of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

owner shall pay over such fine, in the case of foreign-going ships to the shipping-master before whom the crew is discharged, and in the case of home-trade ships to the shipping-master at or nearest to the place at which the crew is discharged;

and, if any master or owner neglects or refuses to pay over any such fine in manner aforesaid, he shall for each such offence incur a penalty not exceeding six times the amount of the fine retained by him: Provided that no act of misconduct for which any such fine as aforesaid has been inflicted and paid shall be otherwise punished under the provisions of this Act.

Penalty for enticing to desert and harbouring deserters.

97.[1] Every person who by any means whatever persuades or attempts to persuade any seaman or apprentice to neglect or refuse to join or proceed to sea in or to desert from his ship, or otherwise to absent himself from his duty, shall for each such offence in respect of each such seaman or apprentice incur a penalty not exceeding one hundred rupees; and every person who wilfully harbours or secretes any seaman or apprentice who has deserted from his ship or who has wilfully neglected or refused to join or has deserted from his ship, knowing or having reason to believe such seaman or apprentice to have so done, shall for every such seaman or apprentice so harboured or secreted incur a penalty not exceeding one hundred rupees.

Penalty for obtaining passage surreptitiously.

98.[1] Any person who secretes himself and goes to sea in any ship without the consent of either the owner, consignee or master, or of a mate, or of any person in charge of such ship, or of any other person entitled to give such consent, shall incur a penalty not exceeding two hundred rupees, or be liable to imprisonment, with or without hard labour, for any period not exceeding four weeks.

On change of masters, documents hereby required to be handed over to successor.

99.[1] If during the progress of a voyage the master of any ship registered at any port or place in India is superseded, or for any other reason quits the ship and is succeeded in the command by some other person, he shall deliver to his successor the various documents relating to the navigation of the ship and to the crew thereof which are in his custody, and shall in default incur a penalty not exceeding one thousand rupees, and such successor shall immediately, on assuming the command of the ship, enter in the official log a list of the documents so delivered to him.

ENQUIRIES INTO WRECKS.[2]

100. [*Enquiry may be instituted in cases of wreck and casualty.*]

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[1] *Cf.* ss. 257, 258 and 259 of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

[2] *See* now the Indian Merchant Shipping Act, 1883 (5 of 1883), Ch. II, Genl. Acts, Vol. III.

101. [*Investigation.*] **102.** [*Report.*] *Rep. by the Indian Merchant Shipping Act, 1875 (IV of 1875).*

Official Logs.

Official logs to be kept in forms sanctioned by Local Government.

103.[1] An official log-book of every ship registered at any port or place in India except home-trade ships of a burden not exceeding three hundred tons shall be kept in a form sanctioned by the Local Government; and such official log may, at the discretion of the master or owner, either be kept distinct from the ordinary ship's log or united therewith, so that in all cases all the blanks in the official log be duly filled up.

Entries to be made in due time.

104.[1] Every entry in every official log shall be made as soon as possible after the occurrence to which it relates, and, if not made on the same day as the occurrence to which it relates, shall be made and dated so as to show the date of the occurrence and of the entry respecting it; and in no case shall any entry therein in respect of any occurrence happening previously to the arrival of the ship at her final port of discharge be made more than twenty-four hours after such arrival.

Entries required in official log.

105.[1] Every master of a ship for which an official log-book is hereby required shall make or cause to be made therein entries of the following matters (that is to say)—

Convictions. 1. Every legal conviction of any member of his crew and the punishment inflicted:

Offences. 2. Every offence committed by any member of his crew for which it is intended to prosecute, or to enforce a forfeiture, or to exact a fine, together with such statement concerning the reading over such entry and concerning the reply (if any) made to the charge, as [2]hereinbefore required:

Punishments. 3. Every offence for which punishment is inflicted on board and the punishment inflicted:

Conduct, etc. of crew. 4. A statement of the conduct, character and qualifications of each of his crew, or a statement that he declines to give an opinion on such particulars:

Illness and injuries. 5. Every case of illness or injury happening to any member of the crew, with the nature thereof, and the medical treatment adopted (if any):

Deaths. 6. Every case of death happening on board, and of the cause thereof:

Births. 7. Every birth happening on board, with the sex of the infant and the names of the parents:

[1] *Cf.* ss. 280, 281 and 282, respectively, of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., 104).
[2] *See* s. 84, *supra*, p. 198.

8. Every marriage taking place on board, with the names and ages of the parties: Marriages.

9. The name of every seaman or apprentice who ceases to be a member of the crew otherwise than by death, with the place, time, manner and cause thereof: Quitting ship.

10. The amount of wages due to any seaman who enters Her Majesty's service during the voyage: Wages of men entering Navy.

11. The wages due to any seaman or apprentice who dies during the voyage, and the gross amount of all deductions to be made therefrom: Wages of deceased seamen.

12. The sale of the effects of any seaman or apprentice who dies during the voyage, including a statement of each article sold and of the sum received for it: Sale of deceased men's effects.

13. Every collision with any other ship, and the circumstances under which the same occurred. Collisions.

106.[1] The entries hereby required to be made in official log-books shall be signed as follows (that is to say), every such entry shall be signed by the master and by the mate or some other of the crew, and every entry of illness, injury, death or birth shall be also signed by the surgeon or medical practitioner on board (if any); and every entry of wages due to, or of the sale of the effects of, any seaman or apprentice who dies shall be signed by the master and by the mate and some other member of the crew; and every entry of wages due to any seaman who enters Her Majesty's service shall be signed by the master and by the seaman, or by the officer authorized to receive the seaman into such service. Entries how to be signed.

107.[1] The following offences in respect of official log-books shall be punishable as hereinafter mentioned (that is to say)— Penalties in respect of official logs.

1. If in any case an official log-book is not kept in the manner hereby required, or if any entry hereby directed to be made in any such log-book is not made at the time and in the manner hereby directed, the master shall for each such offence incur the specific penalty herein mentioned in respect thereof, or, where there is no such specific penalty, a penalty not exceeding fifty rupees.
2. Every person who makes or procures to be made or assists in making any entry in an official log-book, in respect of any occurrence happening previously to the arrival of the ship at her final port of discharge in India, more than twenty-

[1] *Cf.* ss. 283 and 284, respectively of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

four hours after such arrival, shall for each such offence incur a penalty not exceeding three hundred rupees.

3. Every person who wilfully destroys or mutilates or renders illegible any entry in any official log-book, or who wilfully makes or procures to be made or assists in making any false or fraudulent entry or omission in any such log-book, shall for each such offence be liable to imprisonment, with or without hard labour, for a term not exceeding one year.

Entries in official logs to be received in evidence.

108.[1] All entries made in any official log-book as hereinbefore directed shall be received in evidence in any proceeding in any Court of Justice, subject to all just exceptions.

Official logs to be delivered to shipping-master on ship's arrival at port of destination in India.

109.[1] The master of every foreign-going ship shall, within forty-eight hours after the ship's arrival at her final port of destination in India, or upon the discharge of the crew, whichever first happens, deliver to the shipping-master before whom the crew is discharged the official log-book of the voyage; and the master or owner of every home-trade ship of a burden exceeding three hundred tons shall, within twenty-one days after the thirtieth day of June and the thirty-first day of December in every year, transmit or deliver to some shipping-master in India the official log-book for the preceding half year; and every master or owner who refuses or neglects to deliver his official log-book as hereby required, shall be subject to a penalty not exceeding two hundred rupees.

Official logs to be transmitted to shipping-master in case of transfer of ship and in case of loss.

110.[1] If any ship ceases, by reason of transfer of ownership or change or employment, to fall within the operation of section 103 of this Act, the master or owner thereof shall, if such ship is then in any port in India, within one month, and if she is elsewhere, within six months, deliver or transmit to the shipping-master at the port to which the ship belonged the official log-book duly made out to the time at which she ceased to be within such operation; and in default shall for each offence incur a penalty not exceeding one hundred rupees, and, if any ship is lost or abandoned the master or owner thereof shall, if practicable, and as soon as possible, deliver or transmit to the shipping-master at the port to which the ship belonged, the official log-book (if any) duly made out to the time of such loss or abandonment, and in default shall for each offence incur a penalty not exceeding one hundred rupees.

PROCEDURE, ETC.

Depositions to be received in evidence

111. Whenever, in the course of any legal proceedings instituted at any port or place in India before any Judge or Magistrate or before any

[1] *Cf.* ss. 285, 286 and 287, respectively, of the repealed Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104).

person authorized by law or by consent of parties to receive evidence, the testimony of any witness is required in relation to the subject-matter of such proceeding, any deposition that such witness may have previously made in relation to the same subject-matter, before any Justice or Magistrate in Her Majesty's dominions (including all parts of India other than those subject to the same Local Government as the port or place where such proceedings are instituted), or any British consular officer elsewhere, shall, if authenticated by the signature of the Justice, Magistrate or consular officer, be admissible in evidence on due proof that such witness cannot be found within the jurisdiction of the Court in which such proceedings are instituted: when witnesses cannot be produced.

Provided that, if the proceeding is criminal, such deposition shall not be admissible unless it was made in the presence of the person accused and the fact that it was so made is certified by the Justice, Magistrate or consular officer. Proviso.

It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition, and in any criminal proceeding such certificate as aforesaid shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified.

112. All offences under this Act, made punishable by any penalty, may be prosecuted summarily before a Magistrate or any person exercising the powers of a Magistrate. The provisions of [1] Act XIII of 1856, relating to the adjudication of fines and penalties and the enforcing payment thereof, shall apply to penalties imposed under this Act in the towns of Calcutta, Madras and Bombay. [2] * * * * * * Adjudication of offences and recovery of penalties.

XIII of 1856.

113. In all cases where any Court or Magistrate has power to make an order directing payment to be made of any seaman's wages, penalties or other sums of money, then if the party so directed to pay the same is the master or owner of a ship, and the same is not paid at the time and in manner prescribed in the order, the Court or Magistrate who made the order may, in addition to any other powers which such Court or Magistrate may have for the purpose of compelling payment, direct the amount remaining unpaid to be levied by distress and sale of the said ship, her tackle, furniture and apparel. Wages, penalties, etc., payable by master or owner may be levied by distress of ship.

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[1] Rep. in Bombay by the City of Bombay Police Act, 1902 (Bom. Act 4 of 1902), Bom. Code, Vol. IV. Rep., as to Calcutta, by the Calcutta Police Act, 1866 (Ben. 4 of 1866), s. 2, Ben. Code, Vol. IV, and as to Madras, by the Madras Police Act, 1867 (Madras Act 8 of 1867), s. 81; *see* now Madras Act 3 of 1888, by which Act 8 of 1867 was repealed, Mad. Code, Vol. II.

[2] The words "and the Settlement of Prince of Wales' Island, Singapore and Malacca" were repealed by the Repealing Act, 1874 (16 of 1874).

MISCELLANEOUS.

Act not to extend to certain ships.

114. Nothing in this Act shall extend to any ship belonging to or in the service of Her Majesty, or to any ship belonging to any foreign Prince or State, and nothing in this Act, except as otherwise hereinafter provided, shall extend to any ship belonging to the subjects of any foreign Prince or State.

Engagements between masters of foreign ships and lascars or native seamen.

115. When the master of a foreign ship being at any port in India engages any lascar or other native seaman to proceed to any port out of India, he shall enter into an agreement with such seaman, and the agreement shall be made before a shipping-master in the manner hereinbefore provided for the making of agreements in the case of foreign-going ships, and all the provisions of [1] [Chapter IV of the Indian Merchant Shipping Act, 1883, and section 22 of this Act] respecting the form of such agreements and the stipulations to be contained in them and the making and signing of the same, shall be applicable to the engagement of such seaman, and the master of such foreign ship shall give to the shipping-master a bond with the security of some approved person resident in India for an amount calculated at the rate of one hundred rupees for every such seaman and conditioned for the due performance of the said agreement and stipulations [2][and for the repayment to the Secretary of State for India in Council of all expenses which may be incurred by the Government in respect of any such lascar or other native seaman who may be discharged or left behind at any port out of India and becomes distressed and is relieved under the provisions of the [3]Merchant Shipping Act, 1854, section 211, and the enactments amending the same]. 17 & 18 Vict., c. 104.

Fees payable in respect of such engagements.

116. The fees prescribed in section 6 of this Act shall be payable in respect of every such engagement and deductions from the wages of seamen so engaged may be made to the extent and in the manner allowed by the said section.

Penalty for master of foreign ship illegally engaging native seaman.

Power to board suspected ship.

117. If any lascar or other native seaman is engaged by the master of any foreign ship otherwise than is allowed in the two last preceding sections, such master shall be liable to a penalty of one hundred rupees for every such seaman so engaged. It shall be lawful for the shipping-master, by himself or his deputy, to enter on board any foreign ship upon which he shall have reason to believe that any such seaman has

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[1] These words were substituted for the words "sections XXI and XXII of this Act," by the Amending Act, 1891 (12 of 1891), Genl. Acts, Vol. IV.

[2] These words were added by the Indian Merchant Shipping Law Amendment Act, 1891 (6 of 1891), s. 4, Genl. Acts, Vol. IV.

[3] *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), s. 185, Coll. Stats. Ind., Vol. II.

been shipped, and the provisions of section 30 of this Act shall be applicable in respect of every such ship.

Interpretation clause.

118. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say)—

"India."

the word "India" shall mean the territories which are or may become vested in Her Majesty by the [1]Statute 21 & 22 Vict., cap. 106, entitled "An Act for the better Government of India;"

21 & 22 Vict., c. 106.

"Local Government."

the expression "Local Government" shall mean the person or persons for the time being immediately administering the executive government of any portion of the said territories;

"Home-trade ship."

the expression "home-trade ship" shall include every ship employed in trading between any ports of the said territories, or between any port of the said territories and any port or place on the continent of India [2][or in the Straits Settlements] or in the Island of Ceylon;

"Foreign-going ship."

the expression "foreign-going ship" shall include every ship employed in trading between any port of the said territories and any port or place not in the said territories nor on the Continent of India [3][nor in the Straits Settlements] nor in the Island of Ceylon;

"Master."

the word "master" shall include every person (except a pilot) having command or charge of any ship;

"Seaman."

the word "seaman" shall include every person (except masters, pilots and apprentices) employed or engaged in any capacity on board any ship;

Number.

the words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number;

Gender.

words importing the masculine gender shall include females;

"Person."

the word "person" shall include a corporation.

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[1] Short title, "The Government of India Act, 1858." *See* the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

[2] These words were inserted by the Indian Merchant Shipping Law Amendment Act, 1891 (6 of 1891), s. 5 (*1*), Genl. Acts, Vol. IV.

[3] These words were inserted by the Indian Merchant Shipping Law Amendment Act, 1891 (6 of 1891), s. 5 (*2*).

TABLE A.

(*See section 5.*)

FEES TO BE CHARGED FOR MATTERS TRANSACTED AT SHIPPING OFFICES.

1. Engagement or discharge of crews—

	Rs.	As.	P.
In ships under 100 tons	3	0	0
From 100 to 200 ,, ...	7	0	0
200 to 300 ,, ...	10	0	0
300 to 400 ,, ...	12	8	0
400 to 500 ,, ...	15	0	0
500 to 600 ,, ...	17	8	0
600 to 700 ,, ...	20	0	0
700 to 800 ,, ...	22	8	0
800 to 900 ,, ...	25	0	0
900 to 1,000 ,, ...	27	8	0
above 1,000 ,, ...	30	0	0

and so on for ships of larger tonnage, adding for every one hundred tons above one thousand two rupees and eight annas.

2. Engagement or discharge of seamen separately one rupee for each seaman.

TABLE B.

(*See section 6.*)

SUMS TO BE DEDUCTED FROM WAGES BY WAY OF PARTIAL REPAYMENT OF FEES IN TABLE A.

1. In respect of engagements and discharges of crews upon each engagement and each discharge—

	Rs.	As.	P.
from wages of any mate, purser, engineer, surgeon, carpenter, or steward	0	12	0
from wages of all others except apprentices	0	8	0

2. In respect of engagements and discharges of seamen separately upon each engagement and each discharge . . . 0 8 0

ACT No. IX OF 1859.[1]

[*30th April, 1859.*]

An Act to provide for the adjudication of claims to property seized as forfeited.

[1] Short title, "The Forfeiture Act, 1859." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

The object of the unrepealed parts of this Act is stated to be "to give validity to certain forfeitures or seizures of property which have been or are liable to be called in question on the ground of some irregularity of procedure or defect or informality in recording the conviction of the parties whose property has been forfeited or seized or of the absence of a formal adjudication of forfeiture as required by the Forfeiture Act, 1857 (25 of 1857)." (*Statement of Objects and Reasons, first paragraph.*) [As to adjudication and recovery of forfeitures, *see* the Forfeiture Act, 1857 (25 of 1857), *supra.*]

This Act has been declared in force in Upper Burma generally, except the Shan States, by the Burma Laws Act, 1898 (13 of 1898), Bur. Code, and in British Baluchistan and the Agency Territories, by the British Baluchistan Laws Regulation, 1890 (1 of 1890), and the Baluchistan Agency Laws Law, 1890, respectively, Bal. Code.

The whole Act has been extended, under s. 5 of the Scheduled Districts Act, 1874 (14 of 1874), to the following Scheduled Districts, namely :—

Kumáon and Garhwál . .	*See* Gazette of India, 1876, Pt. I, p. 606.	
The Tarái of the Province of Agra	Ditto	1876, Pt. I, p. 505.

It has been declared, by notification under s. 3 (*b*) of the same Act, not to be in force in the District of Lahaul. *See* Gazette of India, 1886, Pt. I, p. 301.

Sections 16, 17, 18 and 20 have been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

The same sections have been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh, *see* Gazette of India, 1880, Pt. I, p. 672.

West Jalpáiguri, *see* Gazette of India, 1881, Pt. I, p. 74.

The District of Hazáribágh, *see* Gazette of India, 1881, Pt. I, p. 507.

The District of Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), *see* Gazette of India, 1881, Pt. I, p. 508.

The District of Mánbhum, *see* Gazette of India, 1881, Pt. I, p. 509.

Pargana Dhálbhum in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 510.

The Scheduled portion of the Mirzápur District, *see* Gazette of India, 1879, Pt. I, p. 383.

Jaunsar Báwar, *see* Gazette of India, 1879, Pt. I, p. 382.

The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application has been barred to that portion of the Hazára District known as Upper Tanawal by the Hazára (Upper Tanawal) Regulation (2 of 1900), Punjab and N.-W. Code*). *See* Gazette of India, 1886, Pt. I, p. 48.

The Scheduled Districts of the Central Provinces, *see* Gazette of India, 1879, Pt. 1, p. 771.

The Scheduled Districts in Ganjam and Vizagapatam, *see* Gazette of India, 1898, Pt. I, p. 870.

The District of Sylhet, *see* Gazette of India, 1879, Pt. I, p. 631.

The rest of Assam (except the North Lushái Hills), *see* Gazette of India, 1897, Pt. I, p. 299.

Preamble.

WHEREAS it is expedient [1] * * * * to remove doubts concerning the powers of officers or other persons to whom commissions may have been issued for the trial of heinous offences in certain districts, and concerning the validity of convictions and adjudications of forfeiture made by such officers or other persons; It is enacted as follows:—

1 to 15. [*Constitution, procedure, &c., of Special Commission Courts.*] *Rep. by the Repealing Act, 1868 (VIII of 1868).*

Convictions involving forfeiture not questionable in suits relating to forfeited property.

16. Whenever any person shall have been convicted of an offence for which his property was forfeited to Government, no Court has power in any suit or proceeding relating to such property to question the validity of the conviction.

Conviction not questionable because capacity of convicting officer not shown.

17. Whenever any person shall have been convicted as above by an officer having power to try and convict, the validity of any such conviction shall not be questioned upon the ground that the record of the conviction does not show in what capacity such officer acted, or that it represents him to have acted in a different capacity from that in which he had power to convict.

Attachment without adjudication of forfeiture not questionable unless offender be acquitted within one year, etc.

18. Whenever any property shall have been attached or seized without either conviction or an adjudication of forfeiture by any officer of Government as property forfeited or liable to be forfeited to Government for an offence for which, upon conviction, the property of the offender would be forfeited, the validity of such attachment or seizure shall not be called in question by any Court or other authority in any suit or proceeding, unless the offender or alleged offender shall, within one year after the seizure of his property have surrendered himself for trial, and upon trial before a competent Court shall have been or shall be acquitted of the offence, and shall prove to the satisfaction of the Court that he did not escape or keep out of the way for the purpose of evading justice.

Exemption of pardoned persons.

Nothing in this section shall extend to persons entitled to pardon upon Her Majesty's proclamation published in the *Calcutta Gazette Extraordinary*, dated the 1st of November, 1858, or to any person who, having surrendered himself within the period of one year after the seizure of his property shall be discharged by order of Government without a prosecution.

19. [*Release of property attached as forfeited.*] *Rep. by the Repealing Act, 1868 (VIII of 1868).*

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[1] The words " to make provision for the adjudication of claims to property seized as forfeited with a view to the speedy determination of the same; and whereas it is also expedient " were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

Rights of parties not charged with offence involving forfeiture. Proviso.

20. Nothing in this Act shall be held to affect the rights of parties not charged with any offence for which upon conviction the property of the offender is forfeited in respect of any property attached or seized as forfeited or liable to be forfeited to Government: Provided that no suit brought by any party in respect of such property shall be entertained unless it be instituted within the period of one year from the date of the attachment or seizure of the property to which the suit relates.

ACT No. XIII OF 1859 [1].

[*4th May, 1859.*]

An Act to provide for the punishment of breaches of contract by Artificers, Workmen and Labourers in certain cases.

Preamble.

WHEREAS much loss and inconvenience are sustained by manufacturers, tradesmen and others in the several Presidency-towns of Calcutta, Madras and Bombay, and in other places, from fraudulent breach of contract on the part of artificers, workmen and labourers who have received money in advance on account of work which they have contracted to perform; and whereas the remedy by suit in the Civil Courts for the recovery of damages is wholly insufficient, and it is just and proper that persons guilty of such fraudulent breach of contract should be subject to punishment; It is enacted as follows:—

Complaint to Magistrate if workman neglect to perform work for which he has received advance.

1. When any artificer, workman or labourer shall have received from any master or employer resident or carrying on business in any Presidency-town [2]* * or from any person acting on behalf of such master or

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[1] Short title, "The Workman's Breach of Contract Act, 1859." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

Cf. the Masters and Servants Act (4 Geo. IV, c. 34), since repealed by s. 17 of the Conspiracy and Protection of Property Act (38 & 39 Vict., c. 86).

This Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely:—

The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum	*See* Gazette of India,	1881, Pt. I, p. 504.
Coorg	Ditto	1878, Pt. I, p. 747.
The Scheduled Districts in Vizagapatam	Ditto	1899, Pt. I, p. 720.

It has been extended, under s. 5 of the same Act, to the Scheduled Districts in Ganjam, *see* Gazette of India, 1899, Pt. I, p. 720.

[2] The words "or in any Station of the Settlement of Prince of Wales' Island, Singapore and Malacca" were repealed by the Repealing Act, 1874 (16 of 1874).

employer, an advance of money on account of any work which he shall have contracted to perform, or to get performed by any other artificers, workmen or labourers, if such artificer, workman or labourer shall wilfully and without lawful or reasonable excuse neglect or refuse to perform or get performed such work according to the terms of his contract, such master or employer or any such person as aforesaid may complain to a [1] Magistrate of Police, and the Magistrate shall thereupon issue a summons or a warrant, as he shall think proper, for bringing before him such artificer, workman or labourer, and shall hear and determine the case.

Magistrate may order repayment of advance or performance of contract.

2. If it shall be proved to the satisfaction of the Magistrate that such artificer, workman or labourer has received money in advance from the complainant on account of any work, and has wilfully and without lawful or reasonable excuse neglected or refused to perform or get performed the same according to the terms of his contract, the Magistrate shall, at the option of the complainant, either order such artificer, workman or labourer to repay the money advanced, or such part thereof as may seem to the Magistrate just and proper, or order him to perform, or get performed, such work according to the terms of his contract;

Penalty if workman fail to comply with order.

and, if such artificer, workman or labourer shall fail to comply with the said order, the Magistrate may sentence him to be imprisoned with hard labour for a term not exceeding three months, or, if the order be for the repayment of a sum of money, for a term not exceeding three months or until such sum of money shall be sooner repaid:

Provided that no such order for the repayment of any money shall, while the same remains unsatisfied, deprive the complainant of any civil remedy by action or otherwise which he might have had but for this Act.

Magistrate may require workman to give security for due performance of order.

3. When the Magistrate shall order any artificer, workman or labourer to perform or get performed any work according to the terms of his contract, he may also at the request of the complainant require such artificer, workman or labourer to enter into a recognizance with sufficient security for the due performance of the order; and, in default of his entering into such recognizance or furnishing such security to the satisfaction of the Magistrate, may sentence him to be imprisoned with hard labour for a period not exceeding three months.

To what contracts Act extends.

4. The word "contract" as used in this Act shall extend to all contracts and agreements whether by deed, or written or verbal, and whether such contract be for a term certain, or for specified work, or otherwise.

Act may be extended by Government.

5. This Act may be extended by the Governor General of India in Council, or by the executive Government of any Presidency or place, to

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[1] The expression "Magistrate of Police" means a Presidency Magistrate, *see* s. 3 (*2*) of the Code of Criminal Procedure, 1898 (Act 5 of 1898), Genl. Acts, Vol. V.

any place within the limits of their respective jurisdictions[1]. In the event of this Act being so extended, the powers hereby vested in a Magistrate of Police shall be exercised by such officer or officers as shall be specially[2] appointed by Government to exercise such powers.

ACT No. IX OF 1860[3].

[*12th March, 1860.*]

An Act to make provision for the speedy determination of certain disputes between workmen engaged in Railway and other public works and their employers.

Preamble. WHEREAS it is expedient to make provision for the speedy determin-

[1] Extended to the Punjab, 13th July, 1859; to all Collectorates in the Bombay Presidency, Bom. R. & O., Vol. I; to the Military Cantonment and Zilla of Poona, *ibid*, to Sindh *ibid*. to all districts of the Madras Presidency, *see* Mad. R. & O.; to town and cantonment of Rangoon by Notification No. 6962, dated 30th December, 1864, *see* Bur. R. M., the Meiktilla District, Burma Gazette, 1904, Pt. 1, p. 602, the Tavoy District, *see ibid*, 1905, Pt. 1, p. 738, and the Thatôn District, *ibid*, 1906, Pt. 1, p. 313; to the stations of Jabbalpore and Saugor, by Notification, dated 16th August, 1859, Calcutta Gazette, 1859, p. 1954; to the Nimar District, Calcutta Gazette, 1862, p. 2980, the Chanda District of the Nagpur Division, Central Provinces Gazette, 1906, Pt. III, p. 263, the Districts of Nagpur, Bhandara, Wardha and Balaghat in the same division, *ibid*, Pt. III, p. 407, the District of Mandala, *ibid*, 1907, Pt. I, p. 162, and to the District of Betul, *ibid*, 1908, Pt. I, p. 260; to the Station of Howrah and to the Suburbs of Calcutta as defined in the Schedule to Act 21 of 1857, and to the District of Beerbhum, Dárjiling, Murshidábád, Nuddea, and Rájshahye, by Notification, dated 2nd January, 1863, Calcutta Gazette, 1863, p. 24; to the sub-division of Barrackpore and thanas Tollygunge, Garden Reach and Budge-Budge in the Sadr subdivision of the district of the 24-Parganas and appointing all Magistrates of the 1st class in these areas to exercise the powers vested in a Magistrate under the Act, *see ibid*, 1904, Pt. I, p. 973; to the Districts of Cachar, Lakhimpur and Sibságar and to the Districts of Darrang, Kámrup and Nowgong, by Notification, dated 16th May, 1864, Calcutta Gazette, 1864, p. 1008; to the Districts of Goálpára and Sylhet by Notification No. 408, dated 14th March, 1876, Assam Gazette, 1876, Pt. 1, p. 211. *See* also Assam R. M.

For extensions of the Act to districts, stations, cantonments and towns in the United Provinces of Agra and Oudh, *see* U. P. List of R. & O., Vol. I.

[2] For notification appointing all Magistrates of the 1st class in any district in the Nagpur Division to exercise the powers vested in a Police Magistrate under the Act, *see* Central Provinces Gazette, 1906, Pt. III, p. 407; for Notification investing certain District Magistrates in Burma with these powers, *see* Bur. Gazette, 1908, Pt. I, p. 440, and all Magistrates of the first class, *see* Punjab Gazette, 1888, Pt. I, p. 789; as to certain areas in Bengal, *see* first footnote.

[3] Short title, "The Employers and Workmen (Disputes) Act, 1860." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

This Act has been declared in force in—

the Santhál Parganas, by the Santhál Parganas Settlement Regulation (3 of 1873), s. 3, as amended by the Santhál Parganas Laws and Justice Regulation, 1899 (3 of 1899), Ben. Code, Vol. I;

Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s. 6, Bur. Code;

British Baluchistan and the Agency Territories, by the British Baluchistan Laws Regulation, 1890 (1 of 1890), s. 3, and by the Baluchistan Laws Law, 1890, respectively, Bal. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum. *See* Gazette of India, 1881, Pt. II, p. 504.

ation of certain disputes between workmen engaged in railway and other public works and their employers; It is enacted as follows:—

Government may empower any Magistrate to decide disputes as to wages or price of work.

1. It shall be lawful for the executive Government of any presidency or place within the British territories in India to invest any [1]Magistrate or other officer exercising the powers of a Magistrate with power to enquire into and decide disputes on account of wages, hire of carriage or the price of work between any workmen employed in the construction of any railway, canal or other public work, the construction of which is or shall be sanctioned by Parliament or by any such executive Government, and the person or persons by whom such workmen are employed.

Pecuniary limit of Magistrate's jurisdiction.

2. Magistrates empowered to decide disputes under the preceding section shall have jurisdiction only in case the amount in dispute shall not exceed the sum of two hundred rupees [2] * * * * *.

Local limits of Magistrate's jurisdiction.

3. The executive Government shall fix, and may from time to time alter, the local limits of the jurisdiction of any Magistrate invested with jurisdiction under section 1 of this Act. A Magistrate so invested may hold a Court for the investigation of disputes of the nature described in the said section at any place within the local limits of his jurisdiction.

Procedure in investigation of disputes.

4. The rules for the institution of suits as provided in [3] Act VIII of 1859 (*for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter*) shall, as far as circumstances will allow, be followed in the investigation of disputes under the preceding sections, and the procedure adopted shall be that provided for cases in which the suit may be disposed of at the first hearing. VII of 1859.

No appeal.

5. There shall be no appeal against any decision passed under this Act.

Order for payment.

6. The Magistrate, having heard and decided the case, shall make an order for the payment of such sum of money (if any) as shall appear to him to be justly due, and, if the person ordered to pay shall make default in the payment of such sum immediately or within such time as the Magistrate shall direct, the Magistrate shall issue his warrant to levy the money by distress and sale of the goods and chattels of the defaulter.

Distress.

Questions as to property distrained.

7. If any question shall arise whether any goods or chattels seized under the warrant of distress belong to the defaulter, or are liable to be distrained and sold as aforesaid, the same shall be determined in the manner provided by the said [3]Act VIII of 1859 for the determination of the like questions arising in the execution of decrees.

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[1] For instance of the exercise of this power, *see* Notification No. 935-A, N.-W. P. Gazette, 1866, p. 9, and Notification No. 637-A, N.-W. P. Gazette, 1865, p. 511. In the Central Provinces all Magistrates of the 1st class have been invested with powers under section 1, *see* Central Provinces Gazette, 1908, Pt. I, p. 413.

[2] The words " and the claim is preferred within six months from the date of which the cause of action arose " at the end of section 2 regarding the limitation of suits were repealed by the Indian Limitation Act, 1871 (9 of 1871). For limitation, *see* now the Indian Limitation Act, 1908 (9 of 1908), Genl. Acts, Vol. VI.

[3] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), Genl. Acts, Vol. VI.

8. Any person who shall voluntarily engage for a stipulated period to work on any railway, canal or other public work, the construction of which is or shall be sanctioned in the manner specified in section 1 of this Act, or to execute any specific work in connection with such public work, and who shall wilfully and without lawful or reasonable excuse neglect or refuse to perform the work so stipulated for, shall be liable, on conviction before a Magistrate, to a fine not exceeding twenty rupees. Penalty for workmen neglecting or refusing to work.

The Magistrate may, at the request of the complainant or of any one authorized to act on his behalf, instead of fining such person, order him to perform or get performed the work according to the terms of his contract or engagement; and, if he shall fail to comply with the order, the Magistrate may, upon proof to his satisfaction of such non-compliance, sentence such person to be imprisoned with or without hard labour for any term not exceeding two months. Power to order specific performance.

9. This Act shall take effect only in those districts or places to which it shall be [1] extended by order of the Governor General of India in Council or of the executive Government of any presidency or place. Operation of Act.

ACT No. XXI OF 1860 [2].

[*21st May, 1860.*]

An Act for the Registration of Literary, Scientific and Charitable Societies.[3]

WHEREAS it is expedient that provision should be made for improving the legal condition of societies established for the promotion of literature, Preamble.

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[1] Act 9 of 1860 has been extended to :—

(1) The Punjab, *see* Punjab Gazette of May 9th, 1860.
(2) Nadiya, 24-Parganas and Baraset, *see* Calcutta Gazette, 1860, p. 1339.
(3) The Central Provinces, *see* C. P. R. and O., Ed. 1896, p. 9.
(4) The District of Nimar, *see* Calcutta Gazette, 1862, p. 2980.
(5) Certain lands between Satna and Jabbalpore, *see* C. P. R. and O., Ed. 1896, p. 9.
(6) The Districts of Ahmadnagar, Broach, Ahmedabad, Khandesh, Kaira, Poona, Sholapur, Surat, Tanna, by Notifications, dated, respectively, 2nd May, 1860, 13th March, 1861, and 12th November 1861, *see* Bom. A. and O., pp. 25 and 26.
(7) Sindh, *see* Notification, dated December 3rd, 1873, Bombay Government Gazette, 1873, Pt. 1, p. 1000.
(8) The Districts of Allahabad, Cawnpore, Etawah, Aligarh, Fatehpur, Mainpuri, Agra and Bulandshahr, *see* Notification No. 1664-A., N.-W. P. Gazette, 1860, p. 638.
(9) To all districts in Oudh
(10) The Kirwi Sub-division in Banda } *See* U. P. List of Local R. and O., p. 15.
(11) The Muttra District

[2] Short title, "The Societies Registration Act, 1860." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

[3] The Act (with the exception of the first four sections) is based on the Literary and Scientific Institutions' Act, 1854 (17 & 18 Vict., c. 112), ss. 20 *et seq.*

science, or the fine arts, or for the diffusion of useful knowledge, or for charitable purposes; It is enacted as follows:—

Societies formed by memorandum of association and registration.

1. Any seven or more persons associated for any literary, scientific or charitable purpose, or for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of association and filing the same with the Registrar of Joint-stock Companies [1]* * form themselves into a society under this Act.

It has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by s. 3 of the Laws Local Extent Act, 1874 (15 of 1874), Genl. Acts, Vol. II.

It has been declared to be in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), Bur. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

West Jalpáiguri . . .	*See* Gazette of India, 1881, Pt. I, p. 74.	
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum .	Ditto	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzápur District . . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 302.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khan and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application has been barred to that portion of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal), Regulation (2 of 1900), Punjab and N.-W. Code*) .	Ditto	1886, Pt. I, p. 48.
The Scheduled Districts in Ganjam and Vizagapatam .	Ditto	1898, Pt. I, p. 870.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushái Hills) . .	Ditto	1897, Pt. I, p. 299.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India, 1880, Pt. I, p. 672.	
Kumáon and Garhwál . .	Ditto	1876, Pt. I, p. 606.
Ajmer and Merwára . .	Ditto	1878, Pt. I, p. 380.

It has been declared, by notification under s. 3 (*b*) of the same Act, not to be in force in the Scheduled District of Lahaul. *See* Gazette of India, 1886, Part I, p. 301.

[1] The words and figures " under Act 19 of 1857 " were repealed by the Repealing Act, 1874 (16 of 1874). *See* now the Indian Companies Act, 1882 (6 of 1882), s. 255, Genl. Acts, Vol. III.

Memorandum of association.

2. The memorandum of association shall contain the following things (that is to say)—

the name of the society:

the objects of the society:

the names, addresses, and occupations of the governors, council, directors, committee or other governing body to whom, by the rules of the society, the management of its affairs is entrusted.

A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association.

Registration. Fees.

3. Upon such memorandum and certified copy being filed, the registrar shall certify under his hand that the society is registered under this Act. There shall be paid to the registrar for every such registration a fee of fifty rupees, or such smaller fee as the Governor General of India in Council may, from time to time, direct; and all fees so paid shall be accounted for to Government.

Annual list of managing body to be filed.

4. Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar of Joint-stock Companies of the names, addresses and occupations of the governors, council, directors, committee or other governing body then entrusted with the management of the affairs of the society.

Property of society how vested.

5. The property, moveable and immoveable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title.

Suits by and against societies.

6. Every society registered under this Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society, and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion:

Provided that it shall be competent for any person having a claim or demand against the society, to sue the president or chairman, or principal secretary or the trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant.

Suits not to abate.

7. No suit or proceeding in any Civil Court shall abate or discontinue by reason of the person by or against whom such suit or proceedings shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or been sued, but the same suit or

proceedings shall be continued in the name of or against the successor of such person.

Enforcement of judgment against society.

8. If a judgment shall be recovered against the person or officer named on behalf of the society, such judgment shall not be put in force against the property, moveable or immoveable, or against the body of such person or officer, but against the property of the society.

The application for execution shall set forth the judgment, the fact of the party against whom it shall have been recovered having sued or having been sued, as the case may be, on behalf of the society only, and shall require to have the judgment enforced against the property of the society.

Recovery of penalty accruing under bye-law.

9. Whenever by any bye-law duly made in accordance with the rules and regulations of the society, or, if the rules do not provide for the making of bye-laws, by any bye-law made at a general meeting of the members of the society convened for the purpose (for the making of which the concurrent votes of three-fifths of the members present at such meeting shall be necessary), any pecuniary penalty is imposed for the breach of any rule or bye-law of the society, such penalty, when accrued, may be recovered in any Court having jurisdiction where the defendant shall reside, or the society shall be situate, as the governing body thereof shall deem expedient.

Members liable to be sued as strangers.

10. Any member who may be in arrear of a subscription which, according to the rules of the society he is bound to pay, or who shall possess himself of or detain any property of the society in a manner or for a time contrary to such rules, or shall injure or destroy any property of the society, may be sued for such arrear or for the damage accruing from such detention, injury or destruction of property in the manner hereinbefore provided.

Recovery by successful defendant of costs adjudged.

But if the defendant shall be successful in any suit or other proceeding brought against him at the instance of the society, and shall be adjudged to recover his costs, he may elect to proceed to recover the same from the officer in whose name the suit shall be brought, or from the society, and in the latter case shall have process against the property of the said society in the manner above described.

Members guilty of offences punishable as strangers.

11. Any member of the society who shall steal, purloin or embezzle any money or other property, or wilfully and maliciously destroy or injure any property of such society, or shall forge any deed, bond, security for money, receipt, or other instrument, whereby the funds of the society may be exposed to loss, shall be subject to the same prosecution, and, if convicted, shall be liable to be punished in like manner as any person not a member would be subject and liable to in respect of the like offence.

Societies enabled to alter, extend or

12. Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular

purpose or purposes, that it is advisable to alter, extend or abridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in a written or printed report and may convene a special meeting for the consideration thereof according to the regulations of the society; abridge their purposes.

but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.

13. Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and, if not, then as the governing body shall find expedient, provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of the society is situate; and the Court shall make such order in the matter as it shall deem requisite: Provision for dissolution of societies and adjustment of their affairs.

Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy, at a general meeting convened for the purpose: Assent required.

Provided that whenever the Government is a member of, or a contributor to, or otherwise interested in, any society registered under this Act, such society shall not be dissolved without the consent of Government. Government consent.

14. If upon the dissolution of any society registered under this Act there shall remain after the satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to or distributed among the members of the said society or any of them, but shall be given to some other society, to be determined by the votes of not less than three-fifths of the members present personally or by proxy at the time of the dissolution, or, in default thereof, by such Court as aforesaid: Provided, however, that this clause shall not apply to any society which shall have been founded or established by the contributions of shareholders in the nature of a Joint-stock Company. Upon a dissolution no member to receive profit. Clause not to apply to Joint-stock Companies.

Member defined.

15. For the purposes of this Act a member of a society shall be a person who, having been admitted therein according to the rules and regulations thereof, shall have paid a subscription or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations; but in all proceedings under this Act no person shall be entitled to vote or to be counted as a member whose subscription at the time shall have been in arrear for a period exceeding three months.

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Governing body defined.

16. The governing body of the society shall be the governors, council, directors, committee, trustees or other body to whom by the rules and regulations of the society the management of its affairs is entrusted.

Registration of societies formed before Act.

17. Any company or society established for a literary, scientific or charitable purpose, and registered under [1] Act XLIII of 1850, or any such society established and constituted previously to the passing of this Act but not registered under the said [1]Act XLIII of 1850, may at any time hereafter be registered as a society under this Act; subject to the proviso that no such company or society shall be registered under this Act unless an assent to its being so registered has been given by three-fifths of the members present personally, or by proxy, at some general meeting convened for that purpose by the governing body.

Assent required.

In the case of a company or society registered under [1]Act XLIII of 1850, the directors shall be deemed to be such governing body.

In the case of a society not so registered, if no such body shall have been constituted on the establishment of the society, it shall be competent for the members thereof, upon due notice, to create for itself a governing body to act for the society thenceforth.

Such societies to file memorandum, etc., with Registrar of Joint-stock Companies.

18. In order to any such society as is mentioned in the last preceding section obtaining registry under this Act, it shall be sufficient that the governing body file with the Registrar of Joint-stock Companies [2]* * a memorandum showing the name of the society, the objects of the society, and the names, addresses and occupations of the governing body, together with a copy of the rules and regulations of the society certified as provided in section 2, and a copy of the report of the proceedings of the general meeting at which the registration was resolved on.

Inspection of documents.

19. Any person may inspect all documents filed with the registrar under this Act on payment of a fee of one rupee for each inspection, and any person may require a copy or extract of any document or any part of any document, to be certified by the registrar, on payment of two annas for every hundred words of such copy or extract; and such certified copy shall be *primâ facie* evidence of the matters therein contained in all legal proceedings whatever.

Certified copies.

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[1] Repealed by the Indian Companies Act, 1866 (10 of 1866), s. 219.

[2] The words and figures " under Act 19 of 1857," were repealed by the Repealing Act, 1874 (16 of 1874). *See* now the Indian Companies Act, 1882 (6 of 1882), s. 255, Genl. Acts, Vol. III.

20. The following societies may be registered under this Act:— charitable societies, the military orphan funds or societies established at the several presidencies of India, societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public, or public museums and galleries of painting and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs. To what societies Act applies.

ACT No. XXXIV OF 1860 [1].

[*2nd August, 1860.*]

An Act to indemnify Officers of Government and other persons in respect of fines and contributions levied, and acts done by them during the late disturbances.

WHEREAS fines and penalties have been imposed and levied by officers of Government in respect of acts committed during the late disturbances; and whereas assessments and contributions have been made and collected for the reconstruction or repairs of public buildings destroyed or injured during the same period and for other purposes; and whereas it is expedient to indemnify all officers of Government and other persons acting under the authority of officers of Government from any penalties or proceedings to which they may have rendered themselves liable since the tenth day of May, 1857, in respect of the said fines, penalties, assessments and contributions, and of any other acts which may have been done by them, and which have been or shall be ratified by the executive Government, and to confirm and make valid the levy of the said fines, penalties, assessments and contributions, and the said acts; It is enacted as follows:— Preamble.

1. All fines, penalties, assessments and contributions imposed since the tenth day of May, 1857, in respect of the destruction or injury of Indemnity in respect of fines, penalties, etc., imposed since 10th May, 1857.

[1] Short title, "The Government Officers' Indemnity Act, 1860." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

The Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely:—

The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum	*See* Gazette of India,	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzápur District	Ditto	1879, Pt. I, p. 383.
Jaunsar Bàwar	Ditto	1879, Pt. I, p. 382.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the Tarái of the Province of Agra. *See* Gazette of India, 1876, Pt. I, p. 505.

Government or other property, or on any other account connected with the late disturbances, by any officer of Government, or by any person acting under the authority of an officer of Government, shall be deemed to have been duly imposed and levied if the same shall have been levied in pursuance of an order of Government, or shall have been or shall be ratified by the executive Government; and all officers of Government and all persons acting under their authority are hereby indemnified and discharged from liability in respect of any such fines, penalties, assessments and contributions, and levying the same; and no suit or proceeding shall be commenced or prosecuted in respect thereof:

Proviso.

Provided that nothing in this Act shall authorize the levy of any fine, penalty, assessment or contribution not already levied.

Indemnity for certain acts done since 10th May, 1857.

2. All acts done since the tenth day of May, 1857, in connection with the late disturbances by officers of Government, or by persons acting under their authority or otherwise, in pursuance of an order of Government, or which shall have been or shall be ratified by the executive Government, are hereby confirmed and made valid; and all such officers of Government and persons as aforesaid are hereby indemnified and discharged from liability in respect of such acts.

THE INDIAN PENAL CODE.

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293. Having in possession obscene book, etc., for sale or exhibition.
294. Obscene acts and songs.
294A. Keeping lottery-office.

CHAPTER XV.

OF OFFENCES RELATING TO RELIGION.

295. Injuring or defiling place of worship, with intent to insult the religion of any class.

SECTIONS.

296. Disturbing religious assembly.
297. Trespassing on burial-places, etc.
298. Uttering words, etc., with deliberate intent to wound religious feelings.

CHAPTER XVI.

OF OFFENCES AFFECTING THE HUMAN BODY.

Of Offences affecting Life.

299. Culpable homicide.
300. Murder.
When culpable homicide is not murder.
301. Culpable homicide by causing death of person other than person whose death was intended.
302. Punishment for murder.
303. Punishment for murder by life-convict.
304. Punishment for culpable homicide not amounting to murder.
304A. Causing death by negligence.
305. Abetment of suicide of child or insane person.
306. Abetment of suicide.
307. Attempt to murder.
Attempts by life-convicts.
308. Attempt to commit culpable homicide.
309. Attempt to commit suicide.
310. Thug.
311. Punishment.

Of the causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

312. Causing miscarriage.
313. Causing miscarriage without woman's consent.
314. Death caused by act done with intent to cause miscarriage.
If act done without woman's consent.
315. Act done with intent to prevent child being born alive or to cause it to die after birth.
316. Causing death of quick unborn child by act amounting to culpable homicide.
317. Exposure and abandonment of child under twelve years, by parent or person having care of it.
318. Concealment of birth by secret disposal of dead body.

Of Hurt.

SECTIONS.

319. Hurt.
320. Grievous hurt.
321. Voluntarily causing hurt.
322. Voluntarily causing grievous hurt.
323. Punishment for voluntarily causing hurt.
324. Voluntarily causing hurt by dangerous weapons or means.
325. Punishment for voluntarily causing grievous hurt.
326. Voluntarily causing grievous hurt by dangerous weapons or means.
327. Voluntarily causing hurt to extort property, or to constrain to an illegal act.
328. Causing hurt by means of poison, etc., with intent to commit an offence.
329. Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.
330. Voluntarily causing hurt to extort confession, or to compel restoration of property.
331. Voluntarily causing grievous hurt to extort confession, or to compel restoration of property.
332. Voluntarily causing hurt to deter public servant from his duty.
333. Voluntarily causing grievous hurt to deter public servant from his duty.
334. Voluntarily causing hurt on provocation.
335. Voluntarily causing grievous hurt on provocation.
336. Act endangering life or personal safety of others.
337. Causing hurt by act endangering life or personal safety of others.
338. Causing grievous hurt by act endangering life or personal safety of others.

Of Wrongful Restraint and Wrongful Confinement.

339. Wrongful restraint.
340. Wrongful confinement.
341. Punishment for wrongful restraint.
342. Punishment for wrongful confinement.
343. Wrongful confinement for three or more days.
344. Wrongful confinement for ten or more days.
345. Wrongful confinement of person for whose liberation writ has been issued.
346. Wrongful confinement in secret.
347. Wrongful confinement to extort property or constrain to illegal act.

SECTIONS.

348. Wrongful confinement to extort confession, or compel restoration of property.

Of Criminal Force and Assault.

349. Force.
350. Criminal force.
351. Assault.
352. Punishment for assault or criminal force otherwise than on grave provocation.
353. Assault or criminal force to deter public servant from discharge of his duty.
354. Assault or criminal force to woman with intent to outrage her modesty.
355. Assault or criminal force with intent to dishonour person, otherwise than on grave provocation.
356. Assault or criminal force in attempt to commit theft of property carried by a person.
357. Assault or criminal force in attempt wrongfully to confine a person.
358. Assault or criminal force on grave provocation.

Of Kidnapping, Abduction, Slavery and Forced Labour.

359. Kidnapping.
360. Kidnapping from British India.
361. Kidnapping from lawful guardianship.
362. Abduction.
363. Punishment for kidnapping.
364. Kidnapping or abducting in order to murder.
365. Kidnapping or abducting with intent secretly and wrongfully to confine person.
366. Kidnapping or abducting woman to compel her marriage, etc.
367. Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.
368. Wrongfully concealing or keeping in confinement kidnapped or abducted person.
369. Kidnapping or abducting child under ten years with intent to steal from its person.
370. Buying or disposing of any person as a slave.
371. Habitual dealing in slaves.
372. Selling minor for purposes of prostitution, etc.
373. Buying minor for purposes of prostitution, etc.
374. Unlawful compulsory labour.

Of Rape.

SECTIONS.

375. Rape.
376. Punishment for rape.

Of Unnatural Offences.

377. Unnatural offences.

CHAPTER XVII.

OF OFFENCES AGAINST PROPERTY.

Of Theft.

378. Theft.
379. Punishment for theft.
380. Theft in dwelling-house, etc.
381. Theft by clerk or servant of property in possession of master.
382. Theft after preparation made for causing death, hurt or restraint, in order to the committing of the theft.

Of Extortion.

383. Extortion.
384. Punishment for extortion.
385. Putting person in fear of injury in order to commit extortion.
386. Extortion by putting a person in fear of death or grievous hurt.
387. Putting person in fear of death or of grievous hurt, in order to commit extortion.
388. Extortion by threat of accusation of an offence punishable with death or transportation, etc.
389. Putting person in fear of accusation of offence, in order to commit extortion.

Of Robbery and Dacoity.

390. Robbery.
When theft is robbery.
When extortion is robbery.
391. Dacoity.
392. Punishment for robbery.
393. Attempt to commit robbery.
394. Voluntarily causing hurt in committing robbery.
395. Punishment for dacoity.

SECTIONS.

396. Dacoity with murder.
397. Robbery or dacoity, with attempt to cause death or grievous hurt.
398. Attempt to commit robbery or dacoity when armed with deadly weapon.
399. Making preparation to commit dacoity.
400. Punishment for belonging to gang of dacoits
401. Punishment for belonging to gang of thieves.
402. Assembling for purpose of committing dacoity.

Of Criminal Misappropriation of Property.

403. Dishonest misappropriation of property.
404. Dishonest misappropriation of property possessed by deceased person at the time of his death.

Of Criminal Breach of Trust.

405. Criminal breach of trust.
406. Punishment for criminal breach of trust.
407. Criminal breach of trust by carrier, etc.
408. Criminal breach of trust by clerk or servant.
409. Criminal breach of trust by public servant, or by banker, merchant or agent.

Of the Receiving of Stolen Property.

410. Stolen property.
411. Dishonestly receiving stolen property.
412. Dishonestly receiving property stolen in the commission of a dacoity.
413. Habitually dealing in stolen property.
414. Assisting in concealment of stolen property.

Of Cheating.

415. Cheating.
416. Cheating by personation.
417. Punishment for cheating.
418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.
419. Punishment for cheating by personation.
420. Cheating and dishonestly inducing delivery of property.

Of Fraudulent Deeds and Dispositions of Property.

SECTIONS.

421. Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.
422. Dishonestly or fraudulently preventing debt being available for creditors.
423. Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.
424. Dishonest or fraudulent removal or concealment of property.

Of Mischief.

425. Mischief.
426. Punishment for mischief.
427. Mischief causing damage to the amount of fifty rupees.
428. Mischief by killing or maiming animal of the value of ten rupees.
429. Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.
430. Mischief by injury to works of irrigation or by wrongfully diverting water.
431. Mischief by injury to public road, bridge, river or channel.
432. Mischief by causing inundation or obstruction to public drainage attended with damage.
433. Mischief by destroying, moving or rendering less useful a light-house or sea mark.
434. Mischief by destroying or moving, etc., a land-mark fixed by public authority.
435. Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.
436. Mischief by fire or explosive substance with intent to destroy house, etc.
437. Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden.
438. Punishment for the mischief described in section 437 committed by fire or explosive substance.
439. Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc.
440. Mischief committed after preparation made for causing death or hurt.

Of Criminal Trespass.

441. Criminal trespass.
442. House-trespass.

SECTIONS.

443. Lurking house-trespass.
444. Lurking house-trespass by night.
445. House-breaking.
446. House-breaking by night.
447. Punishment for criminal trespass.
448. Punishment for house-trespass.
449. House-trespass in order to commit offence punishable with death.
450. House-trespass in order to commit offence punishable with transportation for life.
451. House-trespass in order to commit offence punishable with imprisonment.
452. House-trespass after preparation for hurt, assault or wrongful restraint.
453. Punishment for lurking house-trespass or house-breaking.
454. Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.
455. Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint.
456. Punishment for lurking house-trespass or house-breaking by night.
457. Lurking house-trespass or house-breaking by night, in order to commit offence punishable with imprisonment.
458. Lurking house-trespass or house-breaking by night, after preparation for hurt, assault or wrongful restraint.
459. Grievous hurt caused whilst committing lurking house-trespass or house-breaking.
460. All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.
461. Dishonestly breaking open receptacle containing property.
462. Punishment for same offence when committed by person entrusted with custody.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.

463. Forgery.
464. Making a false document.
465. Punishment for forgery.
466. Forgery of record of Court or of public register, etc.
467. Forgery of valuable security, will etc.

SECTIONS.

468. Forgery for purpose of cheating.
469. Forgery for purpose of harming reputation.
470. Forged document.
471. Using as genuine a forged document.
472. Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 467.
473. Making or possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise.
474. Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it as genuine.
475. Counterfeiting device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material.
476. Counterfeiting device or mark used for authenticating documents other than those described in section 467 or possessing counterfeit marked material.
477. Fraudulent cancellation, destruction, etc., of will, authority to adopt, or valuable security.
477A. Falsification of accounts.

Of Trade, Property and Other Marks.

478. Trade mark.
479. Property mark.
480. Using a false trade mark.
481. Using a false property mark.
482. Punishment for using a false trade mark or property mark.
483. Counterfeiting a trade mark or property mark used by another.
484. Counterfeiting a mark used by a public servant.
485. Making or possession of any instrument for counterfeiting a trade mark or property mark.
486. Selling goods marked with a counterfeit trade mark or property mark.
487. Making a false mark upon any receptacle containing goods.
488. Punishment for making use of any such false mark.
489. Tampering with property mark with intent to cause injury.

Of Currency-Notes and Bank-Notes.

489A. Counterfeiting currency-notes or bank-notes.
489B. Using as genuine, forged or counterfeit currency-notes or bank-notes.
489C. Possession of forged or counterfeit currency-notes or bank-notes.
489D. Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes.

CHAPTER XIX.

Of the Criminal Breach of Contracts of Service.

Sections.

490. Breach of contract of service during voyage or journey.
491. Breach of contract to attend on and supply wants of helpless person.
492. Breach of contract to serve at distant place to which servant is conveyed at master's expense.

CHAPTER XX.

Of Offences relating to Marriage.

493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.
494. Marrying again during life-time of husband or wife.
495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.
496. Marriage ceremony fraudulently gone through without lawful marriage.
497. Adultery.
498. Enticing or taking away or detaining with criminal intent a married woman.

CHAPTER XXI.

Of Defamation.

499. Defamation.
Imputation of truth which public good requires to be made or published.
Public conduct of public servants.
Conduct of any person touching any public question.
Publication of reports of proceedings of Courts.
Merits of case decided in Court, or conduct of witnesses and others concerned.
Merits of public performance.
Censure passed in good faith by person having lawful authority over another.

SECTIONS.

Accusation preferred in good faith to authorized person.
Imputation made in good faith by person for protection of his or other's interests.
Caution intended for good of person to whom conveyed or for public good.
500. Punishment for defamation.
501. Printing or engraving matter known to be defamatory.
502. Sale of printed or engraved substance containing defamatory matter.

CHAPTER XXII.

OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

503. Criminal intimidation.
504. Intentional insult with intent to provoke breach of the peace.
505. Statements conducing to public mischief.
506. Punishment for criminal intimidation.
If threat be to cause death or grievous hurt, etc.
507. Criminal intimidation by an anonymous communication.
508. Act caused by inducing person to believe that he will be rendered an object of the Divine displeasure.
509. Word, gesture or act intended to insult the modesty of a woman.
510. Misconduct in public by a drunken person.

CHAPTER XXIII.

OF ATTEMPTS TO COMMIT OFFENCES.

511. Punishment for attempting to commit offences punishable with transportation or imprisonment.

ACT No. XLV OF 1860.[1]

[*6th October, 1860.*]

The Indian Penal Code.

CHAPTER I.

INTRODUCTION.

Preamble.

WHEREAS it is expedient to provide a general Penal Code for British India; It is enacted as follows:—

Title and extent of operation of the Code.

1. This Act shall be called the Indian Penal Code and shall take effect [2]* * * throughout the whole of the [3] territories which are or may become vested in Her Majesty by the Statute 21 & 22 Victoria,

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[1] All offences under the Indian Penal Code are to be enquired into and tried according to the provisions of the Code of Criminal Procedure, 1898 (Act 5 of 1898), ss. 5 and 28—*see* Genl. Acts, Vol. V.

The Indian Penal Code is superseded by Reg. 5 of 1872 in the Sindh Frontier Districts —*see* s. 11, Bom. Code, Vol. I—in so far as that Regulation is inconsistent with it.

[2] The words and figures "on and from the first day of May, 1861," were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[3] The Indian Penal Code has been applied to offences committed before the 1st January, 1862, in the Punjab—*see* the Punjab Laws Act, 1872 (4 of 1872), s. 39, Punj. & N.-W. Code, and in Ajmer-Merwara—*see* the Ajmer Laws Regulation, 1877 (3 of 1877), s. 29, Aj. Code.

It has been declared in force—

in the Santhal Parganas by s. 3 of the Santhal Parganas Settlement Regulation, 1872 (3 of 1872), as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899), Ben. Code, Vol. I;

in the Arakan Hill District by s. 3 of the Arakan Hill District Laws Regulation, 1874 (9 of 1874), Bur. Code;

in Upper Burma generally, except the Shan States, by s 4 (1) and Sch. I of the Burma Laws Act, 1898 (13 of 1898), Bur. Code;

in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (1 of 1890), s. 3, Bal. Code;

in the Angul District by the Angul District Regulation, 1894 (1 of 1894), s. 3, Ben. Code, Vol. I;

in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), E. B. & A. Code, Vol. I.

(with modifications) in the Kachin Hill-tracts as regards hill-tribes, by the Kachin Hill-tribes Regulation, 1895 (1 of 1895), s. 3, Bur. Code; and

similarly, in the Chin Hills, as regards hill-tribes, by the Chin Hills Regulation, 1896 (5 of 1896), Bur. Code.

It has been declared, under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely, the Tarai Districts of the Province of Agra—*see* Gazette of India, 1876, Pt. I, p. 505; the Districts of Hazaribagh, Lohardaga [now the Ranchi District—*see* Calcutta Gazette, 1899, Pt. I, p. 44], and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singbhum—*see* Gazette of India, 1881, Pt. I, p. 504.

By notification under ss. 3 and 5A of the same Act it has been declared in force in the Pargana of Manpur in Central India—*see* Gazette of India, 1899, Pt. II, p. 419.

The powers of a Local Government were at the same time conferred on the Agent, Governor General, Central India, and also those of a High Court for the purposes of the Code—*see* Gazette of India, *ibid.*

It has been extended under s. 5 of the same Act to the Lushai Hills—*see* Gazette of India, 1898, Pt. II, p. 345.

Chapter 106,[1] entitled "An Act for the better government of India" [2]* * * *

Punishment of offences committed within the said territories.

2. Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said territories [3]* * * *

Punishment of offences committed beyond, but which by law may be tried within, the territories.

3. Any person liable, by any law passed by the Governor General of India in Council, to be tried for an offence committed beyond the limits of the said territories shall be dealt with according to the provisions of this Code for any act committed beyond the said territories in the same manner as if such act had been committed within the said territories.

Extension of Code to extra-territorial offences.

4.[4] The provisions of this Code apply also to any offence committed by—

(1) any Native Indian subject of Her Majesty in any place without and beyond [5] British India;

(2) any other British subject within the territories of any Native Prince or Chief in [5] India;

(3) any servant of the Queen, whether a British subject or not, within the territories of any Native Prince or Chief in India.

Explanation.—In this section the word "offence" includes every act committed outside British India which, if committed in British India, would be punishable under this Code.

Illustrations.

(*a*) A, a coolie, who is a Native Indian subject, commits a murder in Uganda. He can be tried and convicted of murder in any place in British India in which he may be found.

(*b*) B, a European British subject, commits a murder in Kashmir. He can be tried and convicted of murder in any place in British India in which he may be found.

(*c*) C, a foreigner who is in the service of the Punjab Government, commits a murder in Jhind. He can be tried and convicted of murder at any place in British India in which he may be found.

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[1] Coll. Stat., Ind., Vol. I. May now be cited as the Government of India Act, 1858, *see* the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

[2] The words "except the Settlement of Prince of Wales' Island, Singapore and Malacca," were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[3] The words and figures "on or after the said first day of May, 1861," were repealed by the Repealing and Amending Act, 1891 (12 of 1891). As to offences in territorial waters, *see* the Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict., c. 73), Coll. Stat., Ind, Vol. II.

[4] The original s. 4 was repealed by s. 2 of the Indian Penal Code Amendment Act, 1898 (4 of 1898), and the section printed in the text substituted for it. For Statement of Objects and Reasons of the Bill which became Act 4 of 1898, and for Report of Select Committee, *see* Gazette of India, 1897, Pt. V, p. 183, *ibid*, 1898, Pt. V, p. 13, and *cf.* ss. 1 and 8 of Act 21 of 1879.

[5] For definitions of "British India" and "India," *see* the General Clauses Act, 1897 (10 of 1897), s. 3 (7), (27), Genl. Acts, Vol. IV.

(*d*) D, a British subject living in Indore, instigates E to commit a murder in Bombay. D is guilty of abetting murder.

Certain laws not to be affected by this Act.

5. Nothing in this Act is intended to repeal, vary, suspend or affect any of the provisions of the [1]Statute 3 & 4 William IV, Chapter 85, or of any Act of Parliament passed after that Statute in any wise affecting the East India Company, or the said territories, or the inhabitants thereof; or any of the provisions of any [2]Act for punishing mutiny and desertion of officers and soldiers, in the service of Her Majesty [3]* * * *, or of any special or [4] local law.

CHAPTER II.

General Explanations.

Definitions in the Code to be understood subject to exceptions.

6. Throughout this Code every definition of an offence, every penal provision and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the [5] chapter entitled "General Exceptions," though those exceptions are not repeated in such definition, penal provision or illustration.

Illustrations.

(*a*) The sections in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception [6] which provides that nothing shall be an offence which is done by a child under seven years of age.

(*b*) A, a Police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception [7] which provides that "nothing is an offence which is done by a person who is bound by law to do it."

Sense of expression once explained.

7. Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

Gender.

8. The pronoun "he" and its derivatives are used of any person, whether male or female.

Number.

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

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[1] Coll. Stat., Ind., Vol. I. May now be cited as the Government of India Act, 1833—*see* the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

[2] *See* now the Army Act, 44 & 45 Vict., c. 58 (Coll. Stat., Ind., Vol. II), as continued and amended by subsequent Annual Army Acts.

[3] The words "or of the East India Company, or of any Act for the Government of the East India Company," were repealed by the Repealing Act, 1870 (14 of 1870).

[4] A similar saving as to special and local laws was enacted in the Indian Penal Code Amendment Act, 1870 (27 of 1870), s. 15. The amendments made by that Act have been noted in this volume.

[5] Chapter IV, *infra*.

[6] In s. 82, *infra*.

[7] In s. 76, *infra*.

"Man." "Woman."

10. The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age.

"Person."

11. The word "person" includes any Company or Association, or body of persons, whether incorporated or not.

"Public."

12. The word "public" includes any class of the public or any community.

"Queen."

13. The word "Queen" denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.

"Servant of the Queen."

14. The words "servant of the Queen" denote all officers or servants continued, appointed or employed in India by or under the authority of the said [1]Statute 21 & 22 Victoria, Chapter 106, entitled "An Act for the better government of India," or by or under the authority of the Government of India or any Government.

"British India."

15. The words "British India" denote the territories which are or may become vested in Her Majesty by the said [1]Statute 21 & 22 Victoria, Chapter 106, entitled "An Act for the better government of India" [2]* * * *.

"Government of India."

16. The words "Government of India" denote the Governor General of India in Council, or, during the absence of the Governor General of India from his Council, the President in Council, or the Governor General of India alone, as regards the powers which may be lawfully exercised by them or him respectively.

"Government."

17. The word [3] "Government" denotes the person or persons authorized by law to administer executive Government in any part of British India.

"Presidency."

18. The word "Presidency" denotes the territories subject to the Government of a Presidency.

"Judge."

19. The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person

who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

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[1] For "the Government of India Act, 1858" (21 & 22 Vict., c. 106), *see* the Coll. Stat., Ind., Vol. I.

[2] The words "except the Settlement of Prince of Wales' Island, Singapore and Malacca," were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[3] But *see* s. 263A (4), *infra*.

Illustrations.

(*a*) A Collector exercising jurisdiction in a suit under [1] Act X of 1859 is a Judge.

(*b*) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment with or without appeal, is a Judge.

(*c*) A member of a panchayat which has power, under [2] Regulation VII, 1816, of the Madras Code, to try and determine suits, is a Judge.

(*d*) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

"Court of Justice."

20. The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Illustration.

A panchayat acting under [2] Regulation VII, 1816, of the Madras Code, having power to try and determine suits is a Court of Justice.

"Public servant."

21. The words [3] "public servant" denote a person falling under any of the descriptions hereinafter following, namely:—

First.—Every Covenanted servant of the Queen;

Act 10 of 1859 (*an Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal*) has been repealed in the Chota Nagpore Division of Bengal (except as to the District of Manbhum and the Tributary Mahals) by the Chota Nagpore Landlord and Tenant Procedure Act, 1879 (Ben. Act 1 of 1879), *see* now the Chota Nagpore Tenancy Act, 1908 (Ben. Act 6 of 1908), and in the rest of Bengal (except as to Calcutta, Orissa and the Scheduled Districts) by the Bengal Tenancy Act, 1885 (8 of 1885), Ben. Code, Vol. II. It is now in force in the District of Manbhum, in the Darjiling District and in part of the Jalpaiguri District in Bengal, and such parts of it as are not inconsistent with the portions of Act 8 of 1885 which have been extended to the Orissa Division are in force in that Division. Act 10 of 1859 is printed in the Ben. Code, Vol. II.

Act 10 of 1859 has also been repealed in the Province of Agra (except as to certain Scheduled Districts) by the United Provinces Rent Act, 1873 (18 of 1873), and in the Central Provinces by the Central Provinces Tenancy Act, 1883 (9 of 1883). As to the Province of Agra, *see* now the United Provinces Tenancy Act, 1901 (2 of 1901), U. P. Code, Vol. II.

[2] Madras Regulation 7 of 1816 has been repealed by the Madras Civil Courts Act, 1873 (3 of 1873), Mad. Code.

[3] Some other functionaries have by later Acts and Regulations been declared to be "public servants" for the purposes of the Indian Penal Code, *see* s. 11 (2) of the Ajmer Government Wards Regulation, 1888 (1 of 1888), Aj. Code; s. 22 of the Oudh Talukdars Relief Act, 1870 (24 of 1870), U. P. Code; s. 18 (1) of the Allahabad University Act, 1887 (18 of 1887), U. P. Code; the Indian Forest Act, 1878 (7 of 1878), s. 72, Genl. Acts, Vol. II; the Madras Forest Act, 1882 (5 of 1882), s. 60, Madras Code, Vol. II; the Angul District Regulation, 1894 (1 of 1894), s. 56 (Ex.), Ben. Code, Vol. I; the Burma Forest Act, 1902 (Bur. Act 4 of 1902), s. 75; the Glanders and Farcy Act, 1899 (13 of 1899), s. 4 (2), Genl. Acts, Vol. V; the Indian Factories Act, 1881 (15 of 1881), s. 3, Genl. Acts, Vol. III; the Small Cause Courts Act, 1882 (15 of 1882), s. 52; the Upper Burma Registration Regulation, 1897 (2 of 1897), s. 7 (2), Bur. Code; the British Baluchistan Forest Regulation, 1890 (5 of 1890), s. 36, Bal. Code; the Sindh Encumbered Estates Act, 1896 (20 of 1896), s. 35, Bom. Code, Vol. I; the Punjab Steam Boilers and Prime Movers Act, 1902 (Pun. Act 2 of 1902), s. 12 (3), Pun. & N.-W. Code; the United Provinces Steam Boilers and Prime Movers Act, 1899 (1 of 1899), s. 12 (3) U. P. Code, Vol. II; the Burma Steam Boilers and Prime Movers Act, 1882 (18 of 1882), s. 12 (3), Bur. Code; the Central Provinces Court of Wards Act, 1899 (24 of 1899), s. 19 (2), C. P. Code; the Punjab Military Transport Animals Act, 1903 (Punjab Act 1 of 1903), s. 4 (2), Pun. & N.-W. Code; the Merchant Shipping Act, 1883 (5 of 1883), s. 14 (2), Genl. Acts, Vol. III; the Prisons Act, 1894 (9 of 1894), s. 23, Genl. Acts, Vol. IV; the Railways Act, 1890 (9 of 1890), s. 137 (1), Genl. Acts, Vol. IV; the Coroners Act, 1871 (4 of 1871), s. 5, Bom. Code, Vol. I; s. 7 of the Bengal Public Parks

Second.—Every Commissioned Officer in the Military or Naval Forces of the Queen while serving under the Government of India or any Government;

Third.—Every Judge;

Fourth.—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court; and every person specially authorized by a Court of Justice to perform any of such duties;

Fifth.—Every juryman, assessor or member of a panchayat assisting a Court of Justice or public servant;

Sixth.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth.—Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of Government, or to make any survey, assessment or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of Government, or to make, authenticate or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty;

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district.

Illustration.

A Municipal Commissioner is a public servant.

Act, 1904 (Ben. Act 2 of 1904), Ben. Code, Vol. IV; the Assam Labour and Emigration Act, 1901 (6 of 1901), s. 4 (2), E. B. & A. Code, Vol. I; s. 67 of the Burma Canal Act, 1905 (Bur. Act 2 of 1905); s. 107 of the Rangoon Port Act, 1905 (Bur. Act 4 of 1905); the Bombay Court of Wards Act, 1905 (Bom. Act 1 of 1905), s. 21 (2), Bom. Code, Vol. IV; the United Provinces Court of Wards Act, 1899 (U. P. Act 3 of 1899), s. 30, U. P. Code, Vol. II; United Provinces Municipal Act, 1900 (U. P. Act 1 of 1900), s. 51, *ibid*, p. 682.

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

"Moveable property."

22. The words "moveable property" are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

"Wrongful gain."

23. "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss."

"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully. Losing wrongfully.

A person is said to gain wrongfully when such person retains wrongfully as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

"Dishonestly."

24. Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly."

"Fraudulently."

25. A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise.

"Reason to believe."

26. A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing, but not otherwise.

Property in possession of wife, clerk or servant.

27. When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Explanation.—A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

"Counterfeit."

28. A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

[1] *Explanation 1.*—It is not essential to counterfeiting that the limitation should be exact.

[1] *Explanation 2.*—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person

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[1] The Explanations to s. 28 were substituted for the original Explanation by the Metal Tokens Act, 1889 (1 of 1889), s. 9, Genl. Acts, Vol. IV.

so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.

"Document."

29. The word "document" denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1.—It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations.

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used or which may be used as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2.—Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration.

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature.

"Valuable security."

30. The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration.

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security."

"A will."

31. The words "a will" denote any testamentary document.

Words referring to acts include illegal omissions.

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

"Act." "Omission."

33. The word "act" denotes as well a series of acts as a single act: the word "omission" denotes as well a series of omissions as a single omission.

Acts done by several persons in furtherance of common intention.

[1] **34.** When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

When such an act is criminal by reason of its being done with a criminal knowledge or intention.

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

Effect caused partly by act and partly by omission.

36. Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration.

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

Co-operation by doing one of several acts constituting an offence.

37. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Illustrations.

(*a*) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder, and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.

(*b*) A and B are joint jailors, and, as such, have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(*c*) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder, but, as A did not co-operate with B, A is guilty only of an attempt to commit murder.

Persons concerned in criminal act may be guilty of different offences.

38. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

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[1] Section 34 was substituted by the Indian Penal Code Amendment Act, 1870 (27 of 1870), s. 1, Genl. Acts, Vol. II.

Illustration.

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B having ill-will towards Z and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

"Voluntarily."

39. A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration.

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating robbery, and thus causes the death of a person. Here, A may not have intended to cause death, and may even be sorry that death has been caused by his act yet, if he knew that he was likely to cause death, he has caused death voluntarily.

"Offence."

[1]**40.** Except in the chapter and sections mentioned in clauses 2 and 3 of this section the word "offence" denotes a thing made punishable by this Code.

In Chapter IV and in the following sections, namely, sections [2]64, [2]65, [2]66, [2]67, [2]71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as [3]hereinafter defined:

And in sections 141, 176, 177, 201, 202, 212, 216 and 441 the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

"Special law."

41. A "special law" is a law applicable to a particular subject.

"Local law."

42. A "local law" is a law applicable only to a particular part of British India.

"Illegal."

43. The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action: and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

"Legally bound to do."

"Injury."

44. The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

"Life."

45. The word "life" denotes the life of a human being, unless the contrary appears from the context.

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[1] Section 40 was substituted by the Indian Penal Code Amendment Act, 1870 (27 of 1870), s. 2, Genl. Act, Vol. II.

[2] The figures 64, 65, 66 and 71 were inserted in s. 40 by the Indian Penal Code Amendment Act, 1882 (8 of 1882), s. 1, and the figure 67 by the Indian Criminal Law Amendment Act, 1886 (10 of 1886), s. 21 (*1*), Genl. Acts, Vol. III.

[3] In ss. 41, 42.

"Death." **46.** The word "death" denotes the death of a human being, unless the contrary appears from the context.

"Animal." **47.** The word "animal" denotes any living creature, other than a human being.

"Vessel." **48.** The word "vessel" denotes anything made for the conveyance by water of human beings or of property.

"Year" "Month." **49.** Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

"Section." **50.** The word "section" denotes one of those portions of a chapter of this Code which are distinguished by prefixed numeral figures.

"Oath" **51.** The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.

"Good Faith." **52.** Nothing is said to be done or believed in [1] good faith which is done or believed without due care and attention.

CHAPTER III.

Of Punishments.

"Punishments." **53.** The punishments to which offenders are liable under the provisions of this Code are,—

First,—Death;

Secondly,—Transportation;

Thirdly,—Penal servitude;

Fourthly,—[2] Imprisonment, which is of two descriptions, namely:—

(1) Rigorous, that is, with hard labour.

(2) Simple.

Fifthly,—Forfeiture of property;

Sixthly,—[3] Fine.

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[1] As to "good faith" *cf.* s. 3 (*20*) of the General Clauses Act, 1897 (10 of 1897), Genl. Acts, Vol. IV.

[2] This definition of "imprisonment" applies in the case of all Acts of the Governor General in Council made after the 3rd January, 1868, and of all Regulations under the Government of India Act, 1870 (33 Vict., c. 3), s. 1, made after the 14th January, 1887—*see* the General Clauses Act, 1897 (10 of 1897), ss. 3 (26) and 4 (1) and (2), Genl. Acts, Vol. IV.

[3] For power to pass sentence of fine in a case referred to a Council of Elders in a Punjab Frontier District, in the North-West Frontier Province or in Baluchistan, *see* the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), s. 12, Punjab and North-West Code, Ed. 1903.

As to the punishment of whipping generally, *see* the Whipping Act, 1864 (6 of 1864), *infra;* in Upper Burma, *see* the Burma Laws Act, 1898 (13 of 1898), s. 3 (*b*), Bur. Code; in the Punjab Frontier Districts, in the North-West Frontier Province and Baluchistan, *see* the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), ss. 6 and 12 (2), Punj. and N.-W. Code.

Commutation of sentence of death.

54. In every case in which sentence of death shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

Commutation of sentence of transportation for life.

55. In every case in which sentence of transportation for life shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

Sentence of Europeans and Americans to penal servitude.

56. Whenever any person being an European or American is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude instead of transportation according to the provisions of [1]Act XXIV of 1855:

Proviso as to sentence for term exceeding ten years, but not for life.

[2][Provided that, where an European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life.]

Fractions of terms of punishment.

57. In calculating fractions of terms of punishment transportation for life shall be reckoned as equivalent to transportation for twenty years.

Offenders sentenced to transportation how dealt with until transported.

58. In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.

Transportation instead of imprisonment.

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment.

Sentence may be (in certain cases of imprisonment) wholly or partly

[3]**60.** In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall

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[1] *Supra.*

[2] This proviso was added by the Indian Penal Code Amendment Act, 1870 (27 of 1870), s. 3, Genl. Acts, Vol. II.

[3] As to the application of ss. 60 and 63 to 74 to sentences passed in a Punjab Frontier District, in the North-West Frontier Province or in Baluchistan, *see* the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), ss. 13 (2), 61 Punj. & N. W. Code.

As to the application of ss. 60, 63, 64 and 65 and ss. 68 to 74 inclusive to the Sindh Frontier, *see* s. 28 (1) of the Sindh Frontier Regulation, 1892 (3 of 1892), Bom. Code, Vol. I.

rigorous or simple.

be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

Sentence of forfeiture of property.

61. In every case in which a person is convicted of an offence for which he is liable to forfeiture of all his property, the offender shall be incapable of acquiring any property except for the benefit of Government until he shall have undergone the punishment awarded, or the punishment to which it shall have been commuted, or until he shall have been pardoned.

Illustration.

A, being convicted of waging war against the Government of India, is liable to forfeiture of all his property. After the sentence, and whilst the same is in force, A's father dies, leaving an estate which, but for the forfeiture, would become the property of A. The estate becomes the property of Government.

Forfeiture of property, in respect of offenders punishable with death, transportation or imprisonment.

62. Whenever any person is convicted of an offence punishable with death, the Court may adjudge that all his property, moveable and immoveable, shall be forfeited to Government; and, whenever any person shall be convicted of any offence for which he shall be transported or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his moveable and immoveable estate during the period of his transportation or imprisonment, shall be forfeited to Government subject to such provision for his family and dependants as the Government may think fit to allow during such period.

Amount of fine.

[1]**63.** Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

Sentence of imprisonment for non-payment of fine.

[1] **64.** [2] In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

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[1] The provisions of ss. 63 to 70 apply to all fines imposed under the authority of any Act, Regulation, rule or bye-law, unless the Act, Regulation, rule or bye-law contains an express provision to the contrary—*see* the General Clauses Act, 1897 (10 of 1897), Genl. Acts, Vol. IV.

As to the application of ss. 64 to 67 to offences under special or local laws, *see* s. 40, *supra*.

As to the application of ss. 60 and 63 to 74 to sentences passed in a Punjab Frontier District, in the North-West Frontier Province or in Baluchistan, *see* the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), ss. 13 (2), 61, Punj. and N.-W. Code.

[2] The first two clauses of s. 64 were substituted for the words " In every case in which an offender is sentenced to a fine " by the Indian Penal Code Amendment Act, 1882 (8 of 1882), s. 2, Genl. Acts, Vol. III. These two first clauses do not apply in the case of hill-tribes to which the Kachin Hill-tribes Regulation, 1895 (1 of 1895), is applied—*see* ss. 1 (3) and 3 of that Regulation, Bur. Code.

In the case of the hill-tribes to which the Chin Hills Regulation, 1896 (5 of 1896), is applied, for these two first clauses, the words " In every case in which an offender is sentenced to a fine," is substituted—*see* s. 3 and the Schedule to that Regulation, Bur. Code.

and in every case of an offence punishable [1][with imprisonment or fine, or] with fine only, in which the offender is sentenced to a fine,

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

Limit to imprisonment for non-payment of fine when imprisonment and fine awardable.

[2] **65.** The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

Description of imprisonment for non-payment of fine.

[2] **66.** The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

Imprisonment for non-payment of fine, when offence punishabl. with fine only.

[2] **67.** If the offence be punishable with fine only, [3][the imprisonment which the Court imposes in default of payment of the fine shall be simple, and] the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, [4][for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case].

Imprisonment to terminate on payment of fine.

[2] **68.** The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

Termination of imprisonment

[2] **69.** If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that

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[1] These words were inserted by the Indian Criminal Law Amendment Act, 1886 (10 of 1886), s. 21 (2), Genl. Acts, Vol. III.

[2] *See* the first foot-note on preceding page.

[3] These words were inserted by the Indian Penal Code Amendment Act, 1882 (8 of 1882), s. 3, Genl. Acts, Vol. III.

[4] In the case of hill-tribes to which the Kachin Hill-tribes Regulation, 1895 (1 of 1895), is applied, the following words have been substituted for those in square brackets at the end of the section, namely :—

> "for any term not exceeding four months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding eight months when the amount shall not exceed one hundred rupees, and for any term not exceeding twelve months in any other case."

See Regulation 1 of 1895, ss. 1 (3) and 3, Bur. Code.

This substitution is also made in the case of the hill-tribes to which the Chin Hills Regulation, 1896, is applied (*see* Reg. 5 of 1896, s. 3), Bur. Code.

on payment of proportional part of fine.

the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration.

A is sentenced to a fine of one hundred rupees and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

Fine leviable within six years, or during imprisonment. Death not to discharge property from liability.

[1] **70.** The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

Limit of punishment of offence made up of several offences.

[1] **71.** [2] Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

[3][Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.]

Illustrations.

(*a*) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(*b*) But if while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

Punishment of person guilty of one of several offences, the

[1] **72.** In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for

[1] *See* first foot-note on p. 260.

[2] Separable offences which come within the provisions of this section are not "distinct offences" within the meaning of s. 35 of the Code of Criminal Procedure, 1898 (Act 5 of 1898), Genl. Acts, Vol. V.

[3] This clause was added by the Indian Penal Code Amendment Act, 1882 (8 of 1882), s. 4, Genl. Acts, Vol. III.

the offence for which the lowest punishment is provided if the same punishment is not provided for all. Judgment stating that it is doubtful of which.

[1]**73.** Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say— Solitary confinement.

a time not exceeding one month if the term of imprisonment shall not exceed six months:

a time not exceeding two months if the term of imprisonment shall exceed six months and [2][shall not exceed one] year:

a time not exceeding three months if the term of imprisonment shall exceed one year.

[1]**74.** In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods, and, when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods. Limit of solitary confinement.

[3]**75.** Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of those chapters with imprisonment of either description for a term of three years or upwards, shall be subject for every such subsequent offence to transportation for life, [4][or to imprisonment of either description for a term which may extend to ten years]. Enhanced punishment for certain offences under Chapter XII or Chapter XVII after previous conviction.

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[1] *See* first foot-note on p. 260.

[2] These words were substituted for the words " be less than a " by the Indian Penal Code Amendment Act, 1882 (8 of 1882), s. 5, Genl. Acts, Vol. III.

[3] In its application to hill-tribes to which the Kachin Hill-tribes Regulation, 1895 (1 of 1895), is applied, *see* ss. 1 (3) and 3 of that Regulation, Bur. Code, the Code is to be read as if the following additional section were inserted after s. 75 :—

" 75A. Notwithstanding anything in this Code or in any other enactment for the time being in force, a person convicted of any offence punishable under this Code or under any other enactment shall be punishable with fine in lieu of or in addition to any other punishment to which he may be liable."

In the Chin Hills the Code is to be read as if a section similar to the preceding, save a few verbal differences, and similarly numbered, were inserted—*see* the Chin Hills Regulation, 1896 (5 of 1896), Bur. Code.

[4] These words were substituted for the words " or to double the amount of punishment to which he would otherwise have been liable for the same; provided that he shall not in any case be liable to imprisonment for a term exceeding ten years," by the Indian Criminal Law Amendment Act, 1886 (10 of 1886), s. 22.

CHAPTER IV.[1]

General Exceptions.

Act done by a person bound, or by mistake of fact believing himself bound by law.

76. Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Illustration.

(*a*) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(*b*) A, an officer of a Court of Justice, being ordered by that Court to arrest, Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

Act of Judge when acting judicially.

77. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

Act done pursuant to the judgment or order of Court.

78. Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

Act done by a person justified, or by mistake of fact believing himself justified, by law.

79. Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law in doing it.

Illustration.

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment, exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

Accident in doing a lawful act.

80. Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Illustration.

A is at a work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

Act likely to cause harm, but done without

81. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any

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[1] Ch. IV applies to offences punishable under ss. 121A, 124A, 225A, 225B, 294A, and 304A—*see* the Indian Penal Code Amendment Act, 1870 (27 of 1870), s. 13, as amended by the Amending Act, 1891 (12 of 1891), Genl. Acts, Vol. IV.

As to the application of Ch. IV to offences under special or local laws, *see* s. 40, *supra*.

criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property. criminal intent, and to prevent other harm.

Explanation.—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations.

(*a*) A, the captain of a steam-vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down C.

(*b*) A in a great fire pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

82. Nothing is an [1] offence which is done by a child under seven years of age. Act of a child under seven years of age.

83. Nothing is an [1]offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion. Act of a child above seven and under twelve of immature understanding.

84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. Act of a person of unsound mind.

85. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will. Act of a person incapable of judgment by reason of intoxication caused against his will.

86. In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will. Offence requiring a particular intent or knowledge committed by one who is intoxicated.

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[1] *See*, however, the Indian Railways Act, 1890 (9 of 1890), s. 130, Genl. Acts, Vol. IV, as to offences committed by children against certain provisions of that Act. *See* also s. 6, Illustration (*a*), *ante*.

Act not intended and not known to be likely to cause death or grievous hurt done by consent.

[1] **87.** Nothing which is not intended to cause death or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Illustration.

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

Act not intended to cause death done by consent in good faith for person's benefit.

[1] **88.** Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose [2] benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration.

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

Act done in good faith for benefit of child or insane person, by or by consent of guardian.

[1] **89.** Nothing which is done in good faith for the [2] benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause, to that person: Provided—

Provisos.

First.—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

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[1] For exception to ss. 87, 88 and 89, *see* s. 91, *infra*.

[2] Pecuniary benefit is not "benefit" within the meaning of this section—*see* s. 92, Expl., *infra*.

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration.

A, in good faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

Consent known to be given under fear of misconception.

90. A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person.

if the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child.

unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Exclusion of acts which are offences independently of harm caused.

91. The exceptions in sections 87 and 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be itended to cause or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration.

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence " by reason of such harm; " and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

Act done in good faith for benefit of a person without consent.

92. Nothing is an offence by reason of any harm which it may cause to a person for whose [1] benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit: Provided—

Provisos.

First.—That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt or the curing of any grievous disease or infirmity;

[1] Pecuniary benefit is not " benefit " within the meaning of this section—*see* Expl. at end of this section.

Thirdly.—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations.

(*a*) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(*b*) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(*c*) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(*d*) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

Communication made in good faith.

93. No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Illustration.

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

Act to which a person is compelled by threats.

94. Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence: Provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2.—A person seized by a gang of dacoits, and forced by threat of instant death, to do a thing which is an offence by law, for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

Act causing slight harm.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Of the Right of Private Defence.

Things done in private defence.

96. Nothing is an offence which is done in the exercise of the right of private defence.

Right of private defence of the body and of property.

97. Every person has a right, subject to the restrictions contained in section 99, to defend—

First.—His own body and the body of any other person, against any offence affecting the human body;

Secondly.—The property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

Right of private defence against the act of a person of unsound mind, etc.

98. When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations.

(*a*) Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(*b*) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

Acts against which there is no right of private defence.

99. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Extent to which the right may be exercised.

The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or, if he has authority in writing, unless he produces such authority, if demanded.

When the right of private defence of the body extends to causing death.

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:—

First.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly.—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly.—An assault with the intention of committing rape;

Fourthly.—An assault with the intention of gratifying unnatural lust;

Fifthly.—An assault with the intention of kidnapping or abducting;

Sixthly.—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

When such right extends to causing any harm other than death.

101. If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

Commencement and continuance of the right of private defence of the body.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

When the right of private defence of

103. The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence the committing of

which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:— property extends to causing death.

First.—Robbery;

Secondly.—House-breaking by night;

Thirdly.—Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property;

Fourthly.—Theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

When such right extends to causing any harm other than death.

104. If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

Commencement and continuance of the right of private defence of property.

105. The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

Right of private defence against deadly assault when there is risk of harm to innocent person.

106. If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Illustration.

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

CHAPTER V.[1]

OF ABETMENT.

Abetment of a thing.

107. A person abets the doing of a thing, who—

First—Instigates any person to do that thing; or,

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Abettor.

108. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

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[1] Ch. V applies to offences punishable under ss. 121A, 124A, 225A, 225B, 294A and 304A —*see* the Indian Penal Code Amendment Act, 1870 (27 of 1870), s. 13, as amended by the Repealing and Amending Act, 1891 (12 of 1891), Genl. Acts, Vol. IV.

The definition of "abet" here given applies in the case of all Acts of the Governor General in Council, and Regulations under "the Government of India Act, 1870" (33 Vict., c. 3), s. 1, made after the 14th January, 1887—*see* the General Clauses Act, 1897 (10 of 1897), ss. 3 (1) and 4 (2), Genl. Acts, Vol. IV.

As to the application of ss. 109, 110, 112, 114 to 117 to offences under special or local laws, *see* s. 40, *supra*.

The abetment of certain offences is compoundable—*see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), Sch. II, Genl. Acts, Vol. V.

Explanation 2.—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations.

(*a*) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(*b*) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations.

(*a*) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(*b*) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(*c*) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(*d*) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

Illustration.

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section, and is liable to the punishment for murder.

Abetment in British India of offences outside it.

[1] **108A.** A person abets an offence within the meaning of this Code who, in British India, abets the commission of any act without and beyond British India which would constitute an offence if committed in British India.

Illustration.

A, in British India, instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.

Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.

109. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations.

(*a*) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

(*b*) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(*c*) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

Punishment of abetment if person abetted does act with different intention from that of abettor.

110. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

Liability of abettor when one act abetted and different act done.

111. When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:

Proviso.

Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Illustrations.

(*a*) A instigates a child to put poison into the food of Z and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the

[1] S. 108A was added by s. 3 of the Indian Penal Code Amendment Act, 1898 (4 of 1898). For Statement of Objects and Reasons, *see* Gazette of India, 1897, Pt. V, p. 183.
As to authority for instituting prosecutions under this section, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 196, Genl. Acts, Vol. V.

food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

(*b*) A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.

(*c*) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

Abettor when liable to cumulative punishment for act abetted and for act done

112. If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Illustration.

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and, if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

Illustration.

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

Abettor present when offence is committed.

114. Whenever any person, who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

Abetment of offence punishable with death or transportation for life—if offence not committed,

115. Whoever abets the commission of an offence punishable with death or transportation for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if act causing harm be done

and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall

in consequence.

be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration.

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years and also to a fine; and, if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

Abetment of offence punishable with imprisonment —if offence be not committed;

116. Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both;

if abettor or person abetted be a public servant whose duty it is to prevent offence.

and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(*a*) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(*b*) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(*c*) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(*d*) B abets the commission of a robbery by A, a police-officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

Abetting commission of offence by the public or by more than ten persons.

117. Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration.

A affixes in a public place a placard instigating a sect consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

Concealing design to commit offence

118. Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or transportation for life,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, — punishable with death or transportation for life—

shall if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years: and in either case shall also be liable to fine. — if offence be committed; if offence be not committed.

Illustration.

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committted at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

119. Whoever, being a public servant, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent, — Public servant concealing design to commit offence which it is his duty to prevent—

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both; — if offence be committed

or, if the offence be punishable with death or transportation for life, with imprisonment of either description for a term which may extend to ten years; — if offence be punishable with death, etc.;

or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both. — if offence be not committed.

Illustration.

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this section.

120. Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment, — Concealing design to commit offence punishable with imprisonment—

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

if offence be committed;

if offence be not committed.

shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

CHAPTER VI.[1]

OF OFFENCES AGAINST THE STATE.

Waging or attempting to wage war, or abetting waging of war, against the Queen.

121. Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or transportation for life, and shall forfeit all his property.

Illustrations.

(*a*) A joins an insurrection against the Queen. A has committed the offence defined in this section.

(*b*) A in India abets an insurrection against the Queen's Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Queen.

Conspiracy to commit offences punishable by section 121.

[2] **121A.** Whoever within or without British India conspires to commit any of the offences punishable by section 121, or to deprive the Queen of the sovereignty of British India, or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years.

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

Collecting arms, etc., with intention of waging war against the Queen.

122. Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Queen, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall forfeit all his property.

Concealing with intent to facilitate

123. Whoever by any act, or by any illegal omission, conceals the existence of a design to wage war against the Queen, intending by such

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[1] All persons are bound to give information of offences punishable under ss. 121 to 126 inclusive or 130—*see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 44, Genl. Acts, Vol. V.

As to authority for instituting prosecutions under Ch. VI (except s. 127) *see ib.*, s. 196.

[2] S. 121A was inserted by the Indian Penal Code Amendment Act, 1870 (27 of 1870), s. 4.

Chs. IV, V and XXIII of this Code apply to offences punishable under s. 121A—*see ib.*, s. 13.

concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. design to wage war.

124. Whoever, with the intention of inducing or compelling the Governor General of India, or the Governor of any Presidency, or a Lieutenant-Governor, or a Member of the Council of the Governor General of India, or of the Council of any Presidency, to exercise or refrain from exercising in any manner any of the lawful powers of such Governor General, Governor, Lieutenant-Governor or Member of Council, Assaulting Governor General, Governor, etc., with intent to compel or restrain the exercise of any lawful power.

assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such Governor General, Governor, Lieutenant-Governor or Member of Council,

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

[1] **124A.** Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, Her Majesty or the Government established by law in British India, shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine. Sedition.

Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

125. Whoever wages war against the Government of any Asiatic Power in alliance or at peace with the Queen or attempts to wage such war, or abets the waging of such war, shall be punished with transportation for life, to which fine may be added, or with imprisonment of either Waging war against any Asiatic Power in alliance with the Queen.

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[1] The original s. 124A, which was inserted by Act 27 of 1870, s. 5, was repealed by s. 4 of the Indian Penal Code Amendment Act, 1898 (4 of 1898), and the section printed in the text substituted for it. For Select Committee's Report, *see* Gazette of India, 1898, Pt. V, p. 13. For Act 4 of 1898, *see* Genl. Acts, Vol. V.

Chs. IV and V of this Code apply to offences punishable under s. 124A—*see* the Indian Penal Code Amendment Act, 1870 (27 of 1870), s. 13, Genl. Acts, Vol. II.

description for a term which may extend to seven years, to which fine may be added, or with fine.[1]

Committing depredation on territories of Power at peace with the Queen.

126. Whoever commits depredation, or makes preparations to commit depredation, on the territories of any Power in alliance or at peace with the Queen, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used or intended to be used in committing such depredation, or acquired by such depredation.[1]

Receiving property taken by war or depredation mentioned in sections 125 and 126.

127. Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

Public servant voluntarily allowing prisoner of State or war to escape.

128. Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Public servant negligently suffering such prisoner to escape.

129. Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Aiding escape of rescuing or harbouring such prisoner.

130. Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in British India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

CHAPTER VII.

Of Offences relating to the Army and Navy.[2]

Abetting mutiny, or

131. Whoever abets the committing of mutiny by an officer, soldier

[1] *See* also the Foreign Enlistment Act, 1870 (33 & 34 Vict., c. 90), which applies to the whole of Her Majesty's dominions, Coll. Stat., Ind., Vol. I.

[2] Also the Indian Marine Service—*see* s. 138A, *infra*.

or sailor, in the Army or Navy of the Queen, or attempts to seduce any such officer, soldier or sailor from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. attempting to seduce a soldier or sailor from his duty.

[1] *Explanation.*—In this section the words "officer" and "soldier" include any person subject to the Articles of War,[2] for the better government of Her Majesty's Army, or to the Articles of War contained in Act No. V of 1869.[3]

132. Whoever abets the committing of mutiny by an officer, soldier or sailor, in the Army or Navy of the Queen, shall, if mutiny be committed in consequence of that abetment, be punished with death or with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Abetment of mutiny, if mutiny is committed in consequence thereof.

133. Whoever abets an assault by an officer, soldier or sailor, in the Army or Navy of the Queen, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. Abetment of assault by soldier or sailor on his superior officer, when in execution of his office.

134. Whoever abets an assault by an officer, soldier or sailor, in the Army or Navy of the Queen, on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Abetment of such assault if the assault is committed.

135. Whoever abets the desertion of any officer, soldier or sailor, in the Army or Navy of the Queen, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Abetment of desertion of soldier or sailor.

136. Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier or sailor, in the Army or Navy of the Queen, has deserted, harbours such officer, soldier or sailor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Harbouring deserter.

Exception.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

137. The master or person in charge of a merchant vessel, on board of which any deserter from the Army or Navy of the Queen is concealed, shall, though ignorant of such concealment, be liable to a penalty not Deserter concealed on board merchant vesse

[1] This Explanation was added by the Indian Penal Code Amendment Act, 1870 (27 of 1870), s. 6, Genl. Acts, Vol. II.

[2] *See* now the Army Act, 1881 (44 & 45 Vict., c. 58), Coll. Stat., Ind., Vol. II, as continued and amended by subsequent annual Army Acts.

[3] For the Indian Articles of War, 1869 (Act 5 of 1869), *see* Genl. Acts, Vol. II.

through negligence of master.

exceeding five hundred rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

Abetment of act of insubordination by soldier or sailor.

138. Whoever abets what he knows to be an act of insubordination by an officer, soldier or sailor, in the Army or Navy of the Queen, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Application of foregoing sections to the Indian Marine Service.

[1] **138A.** The foregoing sections of this chapter shall apply as if Her Majesty's Indian Marine Service were comprised in the Navy of the Queen.

Persons subject to Articles of War.

139. No person subject to any Articles of War for the Army or Navy of the Queen, or for any part of such Army or Navy, is subject to punishment under this Code for any of the offences defined in this chapter.

Wearing garb or carrying token used by soldier.

140. Whoever, not being a soldier in the Military or Naval service of the Queen, wears any garb or carries any token resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII.[2]

Of Offences against the Public Tranquillity.

Unlawful assembly.

141. An assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons composing that assembly is—

First.—To overawe by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant; or

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[1] S. 138A was inserted by the Indian Marine Act, 1887 (14 of 1887), s. 79, Genl. Acts, Vol. IV.

[2] As to duty to give information of offences punishable under ss. 143, 144, 145, 147 or 148, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), ss. 44 and 45, Genl. Acts, Vol. V.

As to the application of s. 141 to offences under special or local laws, *see* s. 40, *supra*.

As to punishment for an offence under s. 148, enquired into by a Council of Elders in a Punjab Frontier District, in the North-West Frontier Province or in Baluchistan, *see* the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), s. 12, Punj. & N.-W. Code.

As to dispersion of unlawful assemblies, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), Ch. IX.

Second.—To resist the execution of any law, or of any legal process; or

Third.—To commit any mischief or criminal trespass, or other offence; or

Fourth.—By means of criminal force, or show of criminal force to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

Being member of unlawful assembly.

142. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Punishment.

[1] **143.** Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Joining unlawful assembly armed with deadly weapon.

[1] **144.** Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining or continuing in unlawful assembly knowing it has been commanded to disperse.

[1] **145.** Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Rioting.

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Punishment for rioting.

[1] **147.** Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Rioting, armed with deadly weapon.

[1] **148.** Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

[1] *See* second footnote on preceding page.

Every member of unlawful assembly guilty of offence committed in prosecution of common object.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Hiring, or conniving at hiring, of persons to join unlawful assembly.

150. Whoever hires or engages, or employs, or promotes, or connives at the hiring, engagement or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly, in pursuance of such hiring, engagement or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

Assaulting or obstructing public servant when suppressing riot, etc.

152. Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

Wantonly giving provocation, with intent to cause riot—

if rioting be committed;

if not committed.

153. Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and, if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Promoting enmity

[1] **153A.** Whoever by words, either spoken or written, or by signs,

[1] S. 153A was added by s. 5 of the Indian Penal Code Amendment Act, 1898 (4 of 1898), Genl. Acts, Vol. V.

See Report of Select Committee, Gazette of India, 1898, Pt. V, p. 13.

As to authority for instituting prosecutions under this section, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 196, Genl. Acts, Vol. V.

or by visible representations, or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes of Her Majesty's subjects shall be punished with imprisonment which may extend to two years, or with fine, or with both. between classes.

Explanation.—It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different classes of Her Majesty's subjects.

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees, Owner or occupier of land on which an unlawful assembly is held.

if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station,

and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

155. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same. Liability of person for whose benefit riot is committed.

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, Liability of agent of owner or occupier for whose benefit riot is committed.

the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his

power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

Harbouring persons hired for an unlawful assembly.

157. Whoever harbours, receives or assembles in any house or premises in his occupation or charge, or under his control, any persons, knowing that such persons have been hired, engaged or employed, or are about to be hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Being hired to take part in an unlawful assembly or riot;

158. Whoever is engaged or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both;

or to go armed.

and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which used as a weapon of offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Affray.

159. When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray."

Punishment for committing affray.

160. Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

CHAPTER IX.[1]

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

Public servant taking gratification other than legal remuneration in respect of an official act.

161. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or diservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public

[1] As to authority for institution of prosecutions against certain public servants, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 197, Genl. Acts, Vol. V.
As to offering bribes to officers under the Bombay Land Customs Act, 1857 (29 of 1857), *see* s. 19 of that Act, Bom. Code, Vol. I.

servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanations.—"Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"Gratification." The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the [1]Government which he serves, to accept.

"A motive or reward for doing." A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations.

(*a*) A, a munsif, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.

(*b*) A, holding the office of Resident at the Court of a subsidiary Power, accepts a lakh of rupees from the Minister of that Power. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that Power with the British Government. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that Power. A has committed the offence defined in this section.

(*c*) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section.

Taking gratification, in order, by corrupt or illegal means, to influence public servant.

162. Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive

[1] The word "Government" in the definition of "legal remuneration" includes—

a Court of Wards, for the purposes of s. 19 (*2*) of the Central Provinces Government Wards Act, 1899—*see* Act 24 of 1899, s. 12, C. P. Code; the United Provinces Court of Wards Act, 1899 (U. P. Act 3 of 1899), U. P. Code, Vol. II; the Ajmer Government Wards Regulation, 1888 (1 of 1888), s. 11 (*2*), Aj. Code; United Provinces Municipalities Act, 1900 (U. P. Act 1 of 1900), s. 51, U. P. Code, Vol. I; Bom. Court of Wards Act, 1905 (Bom. Act 1 of 1905), s. 21 (*2*), Bom. Code, Vol. IV; the Punj. Court of Wards Act, 1903, s. 42 (*3*) (Punj. Act 2 of 1903), Punj. & N.-W. Code;

the Senate of the Allahabad University, for the purpose of s. 18 (*1*) of the Allahabad University Act, 1887—*see* Act 18 of 1887, s. 18 (*2*), U. P. Code, Vol. I;

an employer of a railway servant is such for the purposes of s. 137 (*1*) of the Indian Railways Act, 1890 (9 of 1890), s. 137 (*2*), Genl. Acts, Vol. IV.

Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, [1][or with any member of the Senate of the Allahabad University,] or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Taking gratification for exercise of personal influence with public servant.

163. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, [1][or with any member of the Senate of the Allahabad University,] or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

An advocate who receives a fee for arguing a case before a Judge; a person who receives pay for arranging and correcting a memorial addressed to Government setting forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust,—are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

Punishment for abetment by public servant of offences defined in section 162 or 163.

164. Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration.

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Public servant obtaining valuable thing without consideration, from person concerned in proceeding or business transacted by such

165. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate,

from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the

[1] These words were inserted by the Allahabad University Act, 1887 (18 of 1887), s. 18 (*2*), U. P. Code, Vol. I, and Genl. Acts, Vol. IV.

official functions of himself or of any public servant to whom he is subordinate, public servant.

or from any person whom he knows to be interested in or related to the person so concerned,

shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a*) A, a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(*b*) A, a Judge, buys of Z, who has a cause pending in A's Court, Government promissory notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(*c*) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both. Public servant disobeying law, with intent to cause injury to any person.

Illustration.

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

167. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Public servant framing an incorrect document with intent to cause injury.

168. Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both. Public servant unlawfully engaging in trade.

169. Whoever, being a public servant, and being legally bound, as such public servant not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated. Public servant unlawfully buying or bidding for property.

Personating a public servant.

170. Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office, or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description, for a term which may extend to two years, or with fine, or with both.

Wearing garb or carrying token used by public servant with fraudulent intent.

171. Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

CHAPTER X.[1]

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

Absconding to avoid service of summons or other proceeding.

172. Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons or notice or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Preventing service of summons or other proceeding, or preventing publication thereof.

173. Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order,

or intentionally prevents the lawful affixing to any place of any such summons, notice or order,

or intentionally removes any such summons, notice, or order from any place to which it is lawfully affixed,

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[1] As to the application of ss. 176, 177, 187 to offences under special or local laws, *see* s. 40, *supra*.

As to authority for instituting prosecutions under ss. 172 to 188, both inclusive, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 195 (*1*) (*a*), Genl. Acts, Vol. V.

As to procedure in case of offences described in ss. 175, 178, 179, 180, *see* the Code of Criminal Procedure, 1898, (Act 5 of 1898), ss. 480, 481, 482, and the Presidency Small Cause Courts Act, (15 of 1882), Ch. XII.

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Non-attendance in obedience to an order from public servant.

174. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations.

(*a*) A being legally bound to appear before the Supreme Court at Calcutta in obedience to a subpœna issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(*b*) A being legally bound to appear before a Zila Judge, as a witness, in obedience to a summons issued by that Zila Judge, intentionally omits to appear. A has committed the offence defined in this section.

Omission to produce document to public servant by person legally bound to produce it.

175. Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

Illustration.

A, being legally bound to produce a document before a Zila Court, intentionally omits to procure the same. A has committed the offence defined in this section.

Omission to give notice or information to public servant by person legally bound to give it.

[1] **176.** Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the notice or information required to be given respects the commission of an offence,[2] or is required for the purpose of preventing the commission of an offence,[2] or in order to the apprehension of an offender,[2] with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Furnishing false information.

[1] **177.** Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purposes of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a*) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(*b*) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound, under clause 5, section VII, Regulation III, 1821,[3] of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police-station, wilfully misinforms the police-officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this section.

[4]*Explanation.*—In section 176 and in this section the word "offence" includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397,

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[1] *See* footnote on page 290, *supra*.

[2] As to meaning of "offence" and "offender," *see* s. 177, Expl.

[3] *Ben.* Reg. III of 1821 was repealed by Act 17 of 1862. *See* now s. 45 of the Code of Criminal Procedure, 1898 (Act 5 of 1898), Genl. Acts, Vol. V.

[4] This Explanation was added by the Indian Criminal Law Amendment Act, 1894 (3 of 1894), s. 5, Genl. Acts, Vol. IV.

398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and the word "offender" includes any person who is alleged to have been guilty of any such act.

Refusing oath or affirmation when duly required by public servant to make it.

178. Whoever refuses to bind himself by an oath [1][or affirmation] to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Refusing to answer public servant authorized to question.

179. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Refusing to sign statement.

180. Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

False statement on oath or affirmation to public servant or person authorized to administer an oath or affirmation.

181. Whoever, being legally bound by an oath [1][or affirmation] to state the truth on any subject to any public servant or other person authorized by law to administer such oath [1][or affirmation], makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

False information with intent to cause public servant to use his lawful power to the injury of another person.

[2]**182.** Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(*a*) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(*b*) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

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[1] These words were inserted by the Indian Oaths Act, 1873 (10 of 1873), s. 15, Genl. Acts, Vol. II.

[2] This section was substituted for the original s. 182 by the Indian Criminal Law Amendment Act, 1895 (3 of 1895), s. 1, Genl. Acts, Vol. IV.

Illustrations.

(*a*) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(*b*) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(*c*) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.

Resistance to taking of property by lawful authority of public servant.

183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Obstructing sale of property offered for sale by authority of public servant.

184. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Illegal purchase or bid for property offered for sale by authority of public servant.

185. Whoever, at any sale of property held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Obstructing public servant in discharge of public functions.

186. Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Omission to assist public servant when bound by law to give assistance.

[1] **187.** Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission

[1] *See* footnote on page 290, *supra*.

of an offence, or of suppressing a riot or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both.

Disobedience to order duly promulgated by public servant.

[1]**188.** Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order, with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration.

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

Threat of injury to public servant.

189. Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Threat of injury to induce person to refrain from applying for protection to public servant.

190. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered, as such, to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

[1] *See* footnote on page 290.

CHAPTER XI.[1]

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

Giving false evidence.

191. Whoever being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations.

(*a*) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(*b*) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(*c*) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(*d*) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(*e*) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document, which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

Fabricating false evidence.

192. Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false

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[1] As to the application of ss. 194, 195, 201 to 203, 211 to 214, 216, 221 to 225 to offences under special or local laws, *see* s. 40, *supra*.

As to authority for instituting prosecutions under ss. 193 to 196, 199, 200, 205 to 211 or 228, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 195, cl. (*b*), Genl. Acts, Vol. V.

As to procedure in case of the offences described in ss. 193, 196, 199, 200 or 205 to 210, *see* the Code of Civil Procedure, s. 643, Genl. Acts, Vol. III; and in case of the offence described in s. 228, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), ss. 480, 481, 482, and the Presidency Small Cause Courts Act, 1882 (15 of 1882), Ch. XII, Genl. Acts, Vol. III.

As to whipping for offences punishable under s. 193, or defined in ss. 194, 195 or 211, *see* the Whipping Act, 1864 (6 of 1864), ss. 4-6, *infra*.

As to punishment for offences under ss. 193 to 196, 201, 211, 212, enquired into by a Council of Elders in a Punjab Frontier District, in the North-West Frontier Province or in Baluchistan, *see* the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), s. 12, Punj. & N.-W. Code.

statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence."

Illustrations.

(*a*) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(*b*) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(*c*) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the Police are likely to search. A has fabricated false evidence.

Punishment for false evidence.

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court-martial [1]* * * * is a judicial proceeding.[2]

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding,[2] though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

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[1] The words " or before a Military Court of Request " were repealed by the Cantonments Act, 1889 (13 of 1889), Genl. Acts, Vol. IV.

[2] For definition of " judicial proceeding " *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 4, cl. (m), Genl. Acts, Vol. V.

An enquiry by a Coroner into the cause of death is declared to be a judicial proceeding within the meaning of this section, by s. 8 of the Coroners' Act, 1871 (4 of 1871), Bom. Code, Vol. I.

Illustration.

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Giving or fabricating false evidence with intent to procure conviction of capital offence.

If innocent person be thereby convicted and executed.

194. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital [1][by the law of British India or England], shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

Giving or fabricating false evidence with intent to procure conviction of offence punishable with transportation or imprisonment.

195. Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which [1][by the law of British India or England] is not capital, but punishable with transportation for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Illustration.

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is transportation for life, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to such transportation or imprisonment, with or without fine.

Using evidence known to be false.

196. Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Issuing or signing false certificate.

197. Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

Using as true a certificate known to be false.

198. Whoever corruptly uses or attempts to use any such certificate, as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

False statement made in declaration which is by law receivable as evidence.

199. Whoever, in any declaration [2] made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes

[1] These words were substituted for the words " by this Code " by the Indian Railways Act, 1890 (9 of 1890), s. 149, Genl. Acts, Vol. IV.

[2] As to meaning of " declaration," *see* s. 200, Expl.

to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

Using as true such declaration knowing it to be false.

200. Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 and 200.

Causing disappearance of evidence of offence, or giving false information to screen offender—if a capital offence;

201. Whoever, knowing or having reason to believe that an offence [1] has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,

shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with transportation;

and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment.

and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Illustration.

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

Intentional omission to give information of offence by person bound to inform.

202. Whoever, knowing or having reason to believe that an offence [1] has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Giving false information respecting an offence committed.

203. Whoever, knowing or having reason to believe that an offence has been committed gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of

[1] As to meaning of "offence," *see* s. 203, Expl., *infra*.

either description for a term which may extend to two years, or with fine, or with both.

[1] *Explanation.*—In sections 201 and 202 and in this section the word "offence" includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

Destruction of document to prevent its production as evidence.

204. Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

False personation for purpose of act or proceeding in suit or prosecution.

205. Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.

206. Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulent claim to property to prevent its seizure as forfeited or in execution.

207. Whoever fraudulently accepts, receives or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or

[1] This Explanation was added by the Indian Criminal Law Amendment Act, 1894 (3 of 1894), s. 7, Genl. Acts, Vol. IV.

order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulently suffering decree for sum not due.

208. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration.

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

Dishonestly making false claim in Court.

209. Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Fraudulently obtaining decree for sum not due.

210. Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

False charge of offence made with intent to injure.

211. Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Harbouring offender—

212. Whenever an offence has been committed, whoever harbours [1] or conceals a person whom he knows or has reason to believe [1] to be the offender, with the intention of screening him from legal punishment,

if a capital offence;

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

if punishable with transportation for life, or with imprisonment.

and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment which may extend to one year and, not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

[2] "Offence" in this section includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

Illustration.

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to transportation for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

Taking gift, etc., to screen an offender from punishment—

213. [3] Whoever accepts or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

if a capital offence;

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with transportation for life, or with imprisonment.

and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with

[1] As to meaning of "harbour," *see* s. 216B, *infra*.
[2] This paragraph was inserted by the Indian Criminal Law Amendment Act, 1894 (3 of 1894), s. 7, Genl. Acts, Vol. IV.
[3] For exception to s. 213, *see* s. 214, exception *infra*.

imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Offering gift or restoration of property in consideration of screening offender—

214. Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or to restore or cause the restoration of any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

if a capital offence;

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with transportation for life, or with imprisonment.

and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

[1]*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.

[*Illustrations.*] *Repealed by Act X of 1882.*

Taking gift to help to recover stolen property, etc.

215. Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any moveable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Harbouring offender who has escaped from custody or whose apprehension has been ordered—

216. Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody,

or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension,

[1] This Exception was substituted for the original exception by the Indian Penal Code Amendment Act, 1882 (8 of 1882), s. 6, Genl. Acts, Vol. III.

[1] harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

if a capital offence ;

if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with transportation for life, or with imprisonment.

if the offence is punishable with transportation for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

[2] "Offence" in this section includes also any act or omission of which a person is alleged to have been guilty out of British India, which, if he had been guilty of it in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or under the [3] Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India. 44 & 45 Vict., c. 69.

Exception.—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

Penalty for harbouring robbers or dacoits.

[4] **216A.** Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours[1] them or any of them, with the intention of facilitating the commission of such robbery or dacoity, or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without British India.

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[1] As to meaning of "harbours," *see* s. 216B, *infra*.
[2] This paragraph was inserted by the Indian Criminal Law Amendment Act, 1886 (10 of 1886), s. 23, Genl. Acts, Vol. III.
[3] Coll. Stat., Ind., Vol. II.
[4] Sections 216A and 216B were inserted by the Indian Criminal Law Amendment Act, 1894 (3 of 1894), s. 8, Genl. Acts, Vol. IV.

Exception.—This provision does not extend to the case in which the harbour is by the husband or wife of the offender.

[1]**216B.** In sections 212, 216 and 216A, the word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means or conveyance, or the assisting a person in any way to evade apprehension. Definition of "harbour" in sections 212, 216 and 216A.

217. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely, thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.

218. Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.

219. Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. Public servant in judicial proceeding corruptly making report, etc., contrary to law.

220. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.

[1] Ss. 216A and 216B were inserted by the Indian Criminal Law Amendment Act, 1894 (3 of 1894), s. 8, Genl. Acts, Vol. IV.

Intentional omission to apprehend on the part of public servant bound to apprehend.

221. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say—

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death; or

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with transportation for life or imprisonment for a term which may extend to ten years; or

with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.

222. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence, [1][or lawfully committed to custody] intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say:—

with transportation for life or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death; or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life or penal servitude for life or to transportation or penal servitude or imprisonment for a term of ten years or upwards; or

with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a

[1] These words were inserted by the Indian Penal Code Amendment Act, 1870 (27 of 1870), s. 8, Genl. Acts, Vol. II.

Court of Justice, to imprisonment for a term not extending to ten years, [1][or if the person was lawfully committed to custody].

Escape from confinement or custody negligently suffered by public servant.

223. Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence [1][or lawfully committed to custody], negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Resistance or obstruction by a person to his lawful apprehension.

224. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

Resistance or obstruction to lawful apprehension of another person.

225. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both:

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with transportation for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

or, if the person to be apprehended, or rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is liable, under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either description

[1] These words were added by the Indian Penal Code Amendment Act, 1870 (27 of 1870), s. 8, Genl. Acts, Vol. II.

for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise provided for.

[1] **225A.** Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished—

(*a*) if he does so intentionally, with imprisonment of either description for a term, which may extend to three years, or with fine, or with both; and

(*b*) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.

[1] **225B.** Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Unlawful return from transportation.

226. Whoever, having been lawfully transported, returns from such transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

Violation of condition of remission of punishment.

227. Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

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[1] Ss. 225A and 225B were substituted, by the Indian Criminal Law Amendment Act, 1886 (10 of 1886), s. 24 (*1*), Genl. Acts, Vol. III, for s. 225A, which was inserted by the Indian Penal Code Amendment Act, 1870 (27 of 1870), s. 9.

Chs. IV and V of the Code apply to offences punishable under ss. 225A and 225B—*see* the Indian Penal Code Amendment Act, 1870 (27 of 1870), s. 13, as amended by the Amending Act, 1891 (12 of 1891), Genl. Acts, Vol. IV.

Intentional insult or interruption to public servant sitting in judicial proceeding.

228. Whoever, intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Personation of a juror or assessor.

229. Whoever, by personation or otherwise, shall intentionally cause, or knowingly suffer himself to be returned, empanelled or sworn as a juryman or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled or sworn, or knowing himself to have been so returned, empanelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CHAPTER XII.[1]

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

"Coin" defined.

230. [2][Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.]

Queen's coin.

[3][Queen's coin is metal stamped and issued by the authority of the Queen, or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the Queen's dominions, in order to be used as money; and metal which has been so stamped and issued shall continue to be the Queen's coin for the purposes of this Chapter, notwithstanding that it may have ceased to be used as money.]

Illustrations.

(*a*) Cowries are not coin.

(*b*) Lumps of unstamped copper, though used as money, are not coin.

(*c*) Medals are not coin, inasmuch as they are not intended to be used as money.

(*d*) The coin denominated as the Company's rupee is the Queen's coin.

[4][(*e*) The "Farukhabad" rupee, which was formerly used as money under the authority of the Government of India, is Queen's coin although it is no longer so used.]

Counterfeiting coin.

231. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

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[1] As to enhanced punishment for second conviction for certain offences under Ch. XII, see s. 75, *supra*.

[2] This paragraph was substituted for the original paragraph by the Indian Penal Code Amendment Act, 1872 (19 of 1872), Genl. Acts, Vol. II.

[3] This paragraph was substituted for the original paragraph by the Indian Penal Code Amendment Act, 1896 (6 of 1896), s. (*1*), Genl. Acts, Vol. IV.

[4] This illustration was added by the Indian Penal Code Amendment Act, 1896 (6 of 1896), s. 1 (*2*), Genl. Acts, Vol. IV.

Explanation.—A person commits this offence who intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

Counterfeiting Queen's coin.

232. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Making or selling instrument for counterfeiting coin.

233. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Making or selling instrument for counterfeiting Queen's coin.

234. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Possession of instrument or material for the purpose of using the same for counterfeiting coin;

235. Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if Queen's coin.

and if the coin to be counterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetting in India the counterfeiting out of India of coin.

236. Whoever, being within British India, abets the counterfeiting of coin out of British India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

Import or export of counterfeit coin.

237. Whoever imports into British India, or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Import or export of counterfeits of Queen's coins.

238. Whoever imports into British India, or exports therefrom, any counterfeit coin which he knows or has reason to believe to be a counterfeit of the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Delivery of coin, possessed with knowledge that it is counterfeit.

239. Whoever, having any counterfeit coin, which at the time when he became possessed of it he knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of Queen's coin possessed with knowledge that it is counterfeit.

240. Whoever, having any counterfeit coin which is a counterfeit of the Queen's coin, and which, at the time when he became possessed of it, he knew to be a counterfeit of the Queen's coin, fraudulently or with intent that fraud may be committed, delivers the same to any person or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration.

A, a coiner, delivers counterfeit Company's rupees to his accomplice B, for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.

242. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of Queen's coin by person who knew it to be counterfeit when he became possessed thereof.

243. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Person employed in mint causing coin to be of different

244. Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by

weight or composition from that fixed by law.

law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Unlawfully taking coining instrument from mint.

245. Whoever, without lawful authority, takes out of any mint, lawfully established in British India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing weight or altering composition of coin.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—A person who scoops out part of the coin and puts anything else into the cavity, alters the composition of that coin.

Fraudulently or dishonestly diminishing weight or altering composition of Queen's coin.

247. Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Altering appearance of coin with intent that it shall pass as coin of different description.

248. Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Altering appearance of Queen's coin with intent that it shall pass as coin of different description.

249. Whoever performs on any of the Queen's coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Delivery of coin possessed with knowledge that it is altered.

250. Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of Queen's coin possessed with knowledge that it is altered.

251. Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other

person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Possession of coin by person who knew it to be altered when he became possessed thereof.

252. Whoever fraudulently, or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of Queen's coin by person who knew it to be altered when he became possessed thereof.

253. Whoever fraudulently, or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of coin as genuine which, when first possessed, the deliverer did not know to be altered.

254. Whoever delivers to any other person as genuine or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in sections 246, 247, 248 or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed.

Counterfeiting Government stamp.

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by [1]Government for the purpose of revenue, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

Having possession of instrument or material for counterfeiting Government stamp.

256. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by [1]Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

[1] As to meaning of "Government," *see* s. 263A (*4*), *infra*.

Making or selling instrument for counterfeiting Government stamp.

257. Whoever makes or performs any part of the process of making, or buys or sells or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by [1]Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sale of counterfeit Government stamp.

258. Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by [1]Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of counterfeit Government stamp.

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by [1]Government for the purpose of revenue, intending to use or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Using as genuine a Government stamp known to be counterfeit.

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by [1]Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government.

261. Whoever fraudulently, or with intent to cause loss to the Government, removes or effaces from any substance, bearing any stamp issued by [1] Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document, a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Using Government stamp known to have been before used.

262. Whoever fraudulently, or with intent to cause loss to the Government, uses for any purpose a stamp issued by [1]Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Erasure of mark denoting that stamp has been used.

263. Whoever fraudulently, or with intent to cause loss to Government, erases or removes from a stamp issued by [1]Government for the purpose of revenue, any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in

[1] As to meaning of "Government," *see* s. 263A (*4*), *infra*.

his possession, or sells or disposes of, any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Prohibition of fictitious stamps.

[1]**263A.** (*1*) Whoever—

(*a*) makes, knowingly utters, deals in or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp, or

(*b*) has in his possession, without lawful excuse, any fictitious stamp, or

(*c*) makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp,

shall be punished with fine which may extend to two hundred rupees.

(*2*) Any such stamp, die, plate, instrument or materials in the possession of any person for making any fictitious stamp may be seized and shall be forfeited.

(*3*) In this section "fictitious stamp" means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(*4*) In this section and also in sections 255 to 263, both inclusive, the word "Government," when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorized by law to administer executive government in any part of India, and also in any part of Her Majesty's dominions or in any foreign country.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

Fraudulent use of false instrument for weighing.

264. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

[1] S. 263A was added by the Indian Criminal Law Amendment Act, 1895 (3 of 1895), s. 2, Genl. Acts, Vol. IV.

Fraudulent use of false weight or measure.

265. Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Being in possession of false weight or measure.

266. Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Making or selling false weight or measure.

267. Whoever makes, sells or disposes of any instrument for weighing, or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIV.

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

Public nuisance.

268. A person is guilty of a [1] public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

Negligent act likely to spread infection of disease dangerous to life.

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

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[1] The definition of " public nuisance " here given applies in the case of all Acts of the Governor General in Council and to Regulations under 33 Vict., cap. 3, s. 1, made after 14th January, 1887—*see* the General Clauses Act, 1897 (10 of 1897), s. 3, cl. (*44*), and s. 4 (*2*), Genl. Acts, Vol. IV.

As to procedure in case of public nuisances, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), Ch. X, ss. 133 *et seq.*, Genl. Acts, Vol. V.

Malignant act likely to spread infection of disease dangerous to life.

270. Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Disobedience to quarantine rule.

271. Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Adulteration of food or drink intended for sale.

[1] **272.** Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such articles as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of noxious food or drink.

[1] **273.** Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Adulteration of drug.

[1] **274.** Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of adulterated drugs.

[1] **275.** Whoever knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as

[1] For power to order destruction of the food or other thing in respect of which a conviction is had under ss. 272-275, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 521 (2), Genl. Acts, Vol. V.

Cf. also ss. 495, 496 of the Calcutta Municipal Act, 1899 (Ben. Act 3 of 1899), Ben. Code, Vol. III, and the Bombay Prevention of Adulteration Act, 1899 (Bom. Act 2 of 1899), Bom. Code, Vol. IV.

unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of drug as a different drug or preparation.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Fouling water of public spring or reservoir.

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Making atmosphere noxious to health.

278. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

Rash driving or riding on a public way.

279. Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Rash navigation of vessel.

280. Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Exhibition, of false light, mark or buoy.

281. Whoever exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Conveying person by water for hire in unsafe or over-loaded vessel.

282. Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Danger or obstruction in public way or line of navigation.

283. Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

Negligent conduct with respect to poisonous substance.

284. Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person,

or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to fire or combustible matter.

285. Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person.

or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to explosive substance.

286. Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to machinery.

287. Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to pulling down or repairing buildings.

288. Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to animal.

289. Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Punishment for public nuisance in cases not otherwise provided for.

290. Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

Continuance of nuisance after injunction to discontinue.

291. Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

Sale, etc., of obscene books, etc.

[1] **292.** Whoever sells or distributes, imports or prints for sale or hire, or wilfully exhibits to public view, any obscene book, pamphlet, paper, drawing, painting, representation or figure, or attempts, or offers so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Exception.—This section does not extend to any representation sculptured, engraved, painted or otherwise represented, on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

Having in possession obscene book, etc., for sale or exhibition.

[1] **293.** Whoever has in his possession any such obscene book or other thing as is mentioned in the last preceding section for the purpose of sale, distribution or public exhibition, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

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[1] For power to order the destruction of copies of the thing in respect of which a conviction under s. 292 or s. 293 is had, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 521, Genl. Acts, Vol. V.

Obscene acts and songs.

[1] **294.** Whoever, to the annoyance of others,

(*a*) does any obscene act in any public place, or

(*b*) sings, recites or utters any obscene songs, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Keeping lottery-office.

[2] **294A.** Whoever keeps any office or place for the purpose of drawing any lottery not authorized by Government shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.

CHAPTER XV.

OF OFFENCES RELATING TO RELIGION.

Injuring or defiling place of worship, with intent to insult the religion of any class.

295. Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Disturbing religious assembly.

296. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Trespassing on burial-places, etc.

297. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby,

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[1] This section was substituted for the original s. 294 by the Indian Criminal Law Amendment Act, 1895 (3 of 1895), s. 3, Genl. Acts, Vol. IV.

[2] S. 294A was inserted by the Indian Penal Code Amendment Act, 1870 (7 of 1870), s. 10, Genl. Acts, Vol. II. As to authority for instituting prosecutions under s. 294A, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 196, Genl. Acts, Vol. V.

Chs. IV, V and XXIII of the Code apply to offences punishable under s. 294 A—*see* the Indian Penal Code Amendment Act, 1870 (27 of 1870), s. 13, Genl. Acts, Vol. II.

commits any trespass in any place of worship or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Uttering words, etc., with deliberate intent to wound religious feelings.

[1] **298.** Whoever, with deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XVI.

OF OFFENCES AFFECTING THE HUMAN BODY.

Of Offences affecting Life.

Culpable homicide.

[2] **299.** Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations.

(*a*) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(*b*) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause, Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

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[1] Offences punishable under s. 298 are compoundable—*see* the Code of Criminal Procedure, 1898 (5 of 1898), s. 345, Genl. Acts, Vol. V. As to stage of proceedings at which no composition is allowed without the leave of the Court, *see ibid*, sub-section (*5*).

[2] As to duty to give information of offences punishable under s. 302, 303 or 304, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 44. *See* also (as to offences punishable under s. 302 or 304) s. 45 of the Code, and (as to murder and culpable homicide not amounting to murder) s. 45 of the Code, as amended for Burma by the Upper Burma Village Regulation, 1887 (14 of 1887), s. 4, and by the Lower Burma Village Act, 1889 (3 of 1889), s. 5, Bur. Code.

As to whipping in Upper Burma for offences mentioned in ss. 302, 304, 307, *see* the Burma Laws Act, 1898 (13 of 1898), s. 4 (3) (*b*) and Sch. II, Bur. Code.

As to punishment for offences under ss. 302, 304, 307, 308 enquired into by a Council of Elders in a Punjab Frontier District, in the North-West Frontier Province or in Baluchistan, *see* the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), s. 12, Punj. & N.-W. Code.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or— Murder.

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4thly.—If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations.

(*a*) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(*b*) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death or such bodily injury as in the ordinary course of nature would cause death.

(*c*) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(*d*) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

When culpable homicide is not murder.

Exception 1.—Culpable homicide is not murder if the offender deprived of the power of self-control by grave and sudden prov causes the death of the person who gave the provocation, or ca death of any other person by mistake or accident.

The above exception is subject to the following provisos[1]:—

First.—That the provocation is not sought or voluntarily p by the offender as an excuse for killing or doing l any person.

Secondly.—That the provocation is not given by anything obedience to the law, or by a public servant in the exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything the lawful exercise of the right of private defence

Explanation.—Whether the provocation was grave and enough to prevent the offence from amounting to murder is a que fact.

Illustrations.

(*a*) A, under the influence of passion excited by a provocation given by Z, int kills Y, Z's child. This is murder, inasmuch as the provocation was not give child, and the death of the child was not caused by accident or misfortune in doi caused by the provocation.

(*b*) Y gives grave and sudden provocation to A. A, on this provocation, fire at Y, neither intending nor knowing himself to be likely to kill Z, who is near out of sight. A kills Z. Here A has not committed murder, but merely culpal cide.

(*c*) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent p the arrest, and kills Z. This is murder, inasmuch as the provocation was given b done by a public servant in the exercise of his powers.

(*d*) A appears as a witness before Z, a Magistrate. Z says that he does not word of A's deposition, and that A has perjured himself. A is moved to sudde by these words, and kills Z. This is murder.

(*e*) A attempts to pull Z's nose. Z, in the exercise of the right of private def hold of A to prevent him from doing so. A is moved to sudden and violent p consequence, and kills Z. This is murder, inasmuch as the provocation was gi thing done in the exercise of the right of private defence.

(*f*) Z strikes B. B is by this provocation excited to violent rage. A, a b intending to take advantage of B's rage, and to cause him to kill Z, puts a knif hand for that purpose. B kills Z with the knife. Here B may have commi culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offen the exercise in good faith of the right of private defence of p property, exceeds the power given to him by law and causes th of the person against whom he is exercising such right of defence premediation, and without any intention of doing more harm necessary for the purpose of such defence.

[1] As to the application of these provisos in the case of causing hurt on provoc s. 335, *Expl.*, *infra*.

Illustrations.

Z attempts to horsewhip A not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A, believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration.

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

Culpable homicide by causing death of person other than person whose death was intended.

301. If a person by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

Punishment for murder.

302. Whoever commits murder shall be punished with death, or transportation for life, and shall also be liable to fine.

Punishment for murder by life convict.

303. Whoever, being under sentence of transportation for life, commits murder, shall be punished with death.

Punishment for culpable homicide not amounting to murder.

304. Whoever commits culpable homicide not amounting to murder, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with

the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

Causing death by negligence.

[1] **304A.** Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Abetment of suicide of child or insane person.

305. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide shall be punished with death or transportation for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Abetment of suicide.

306. If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Attempt to murder.

307. Whoever does any act with such intention or knowledge and under such circumstances, that if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts.

[2] When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death.

Illustrations.

(*a*) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(*b*) A with the intention of causing the death of a child of tender years exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(*c*) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of [3][the first paragraph of] this section.

(*d*) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

Attempt to commit culpable homicide.

308. Whoever does any act with such intention or knowledge, and under such circumstances, that, if he by that act caused death, he would

[1] S. 304A was inserted by the Indian Penal Code Amendment Act, 1870 (27 of 1870), s. 12, Genl. Acts, Vol. II.

Chs. IV, V and XXIII of the Code apply to offences punishable under s. 304A—*see* the Indian Penal Code Amendment Act, 1870 (27 of 1870), s. 13, Genl. Acts, Vol. II.

[2] This clause was added by the Indian Penal Code Amendment Act, 1870 (27 of 1870), s. 11, Genl. Acts, Vol. II.

[3] These words were inserted by the Amending Act, 1891 (12 of 1891), Sch. II, Genl. Acts, Vol. IV.

be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration.

A, on grave and adden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

Attempt to commit suicide.

309. Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year [1][or with fine, or with both].

Thug.

310. Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a thug.

Punishment.

311. Whoever is a thug shall be punished with transportation for life, and shall also be liable to fine.

Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

Causing miscarriage.

312. Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A woman who causes herself to miscarry, is within the meaning of this section.

Causing miscarriage without woman's consent.

313. Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Death caused by act done

314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be

[1] These words were substituted for the words " and shall also be liable to fine " by the Indian Penal Code Amendment Act, 1882 (8 of 1882), s. 7, Gen. Acts, Vol. III.

with intent to cause miscarriage.

punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

If act done without woman's consent.

and if the act is done without the consent of the woman, shall be punished either with transportation for life, or with the punishment above mentioned.

Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

Act done with intent to prevent child being born alive or to cause it to die after birth.

315. Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Causing death of quick unborn child by act amounting to culpable homicide.

316. Whoever does any act under such circumstances that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustration.

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

Exposure and abandonment of child under twelve years, by parent or person having care of it.

317. Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

Concealment of birth by secret disposal of dead body.

318. Whoever, by secretly burying or otherwise disposing of the dead body of a child, whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Of Hurt.

Hurt.

319. Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

Grievous hurt.

320. The following kinds of hurt only are designated as "grievous":—

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

Voluntarily causing hurt.

321. Whoever does any act with intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

Voluntarily causing grievous hurt.

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt, and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

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[1] As to the application of ss. 327-331 to offences under special or local laws, *see* s. 40, *supra*.

Offences punishable under ss. 323 and 334 are compoundable, and those punishable under ss. 324, 325, 335, 337 and 338 may be compounded with the permission of the Court—*see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 345, Genl. Acts, Vol. V. As to stage of proceedings at which no composition is allowed without the leave of the Court, *see ibid*, sub-section (5).

As to whipping in Upper Burma for offences mentioned in ss. 325, 326, 327, 329, 333, *see* the Upper Burma Laws Act, 1898 (13 of 1898), s. 4 (3) (*b*), and Sch. II, Bur. Code; in a Punjab Frontier District, in the North-West Frontier Province or in Baluchistan for offences punishable under ss. 325, 326, *see* the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), s. 6, Punj. and N.-W. Code.

As to punishment for offences under ss. 325, 326, 328, enquired into by a Council of Elders in a Punjab Frontier District, in the North-West Frontier Province or in Baluchistan, *see* the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), s. 12.

Illustration.

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

Punishment for voluntarily causing hurt.

323. Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Voluntarily causing hurt by dangerous weapons or means.

324. Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument, which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for voluntarily causing grievous hurt.

325. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Voluntarily causing grievous hurt by dangerous weapons or means.

326. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt to extort property, or to constrain to an illegal act.

327. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Causing hurt by means of poison, etc., with intent

328. Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to

commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. to commit an offence.

329. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Voluntarily causing grievous hurt to extort property or to constrain to an illegal act.

330. Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer or any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Voluntarily causing hurt to extort confession, or to compel restoration of property.

Illustration.

(*a*) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(*b*) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(*c*) A, a revenue-officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(*d*) A, a zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

331. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Voluntarily causing grievous hurt to extort confession or to compel restoration of property.

332. Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of any- Voluntarily causing hurt to deter public servant from his duty.

thing done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Voluntarily causing grievous hurt to deter public servant from his duty.

333. Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt on provocation.

334. Whoever voluntarily causes hurt on grave and sudden [1] provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term, which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Voluntarily causing grievous hurt on provocation.

335. Whoever [2] voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Explanation.—The last two sections are subject to the same provisos as Exception 1, section 300.

Act endangering life or personal safety of others.

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

Causing hurt by act endangering life or personal safety of others.

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Causing grievous hurt by act endangering life or personal

338. Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for

[1] As to provocation, see s. 335, *Expl.*
[2] The word "voluntarily" was inserted by the Indian Penal Code Amendment Act, 1882 (8 of 1882), s. 8, Genl. Acts, Vol. III.

a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both. safety of others.

Of Wrongful Restraint and Wrongful Confinement.[1]

339. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person. Wrongful restraint.

Exception.—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustrations.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person. Wrongful confinement.

Illustrations.

(*a*) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(*b*) A places men with firearms at the outlets of a building and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

341. Whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both. Punishment for wrongful restraint.

342. Whoever wrongfully confines any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both. Punishment for wrongful confinement.

343. Whoever wrongfully confines any person for three days or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Wrongful confinement for three or more days.

344. Whoever wrongfully confines any person for ten days or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. Wrongful confinement for ten or more days.

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[1] As to the application of ss. 347 and 348 to offences under special or local laws, *see* s. 40, *supra*.

Offences punishable under ss. 341 and 342 are compoundable—*see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 345, Genl. Acts, Vol. V. As to stage of proceedings at which no composition is allowable without the leave of the Court, *see ibid*, sub-section (*5*).

Wrongful confinement of person for whose liberation writ has been issued.

345. Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other section of this Chapter.

Wrongful confinement in secret.

346. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any other punishment to which he may be liable for such wrongful confinement.

Wrongful confinement to extort property or constrain to illegal act.

347. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security, or of constraining the person confined, or any person interested in such person to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement to extort confession, or compel restoration of property.

348. Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence, or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Of Criminal Force and Assault [1].

Force.

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact, with any part of that other's

[1] Offences punishable under ss. 352, 353, 358 are compoundable—*see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 345, Genl. Acts, Vol. V. As to stage of proceedings at which no composition is allowable without the leave of the Court, *see ibid*, sub-section (5).

As to punishment for an offence under s. 354 enquired into by a Council of Elders in a Punjab Frontier District, in the North-West Frontier Province or in Baluchistan, *see* the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), s. 12, Punj. & N.-W. Code.

body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

Criminal force.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations.

(*a*) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(*b*) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.

(*c*) Z is riding in a palanquin. A, intending to rob Z, seizes the pole, and stops the palanquin. Here, A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(*d*) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.

(*e*) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z, or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(*f*) A intentionally pulls up a woman's veil. Here A intentionally uses force to her and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(*g*) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling. A has therefore intentionally used force to Z; and if has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear or annoyance to Z, A has used criminal force.

(*h*) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

Assault.

351. Whoever makes any gesture, or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(*a*) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(*b*) A begins to unloose the muzzle of a ferocious dog, intending, or knowing it to be likely, that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(*c*) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

Punishment for assault or criminal force otherwise than on grave provocation.

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or

if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

Assault or criminal force to deter public servant from discharge of his duty.

353. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force to

354. Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her

modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. — woman with intent to outrage her modesty.

355. Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. — Assault or criminal force with intent to dishonour person, otherwise than on grave provocation.

356. Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. — Assault or criminal force in attempt to commit theft of property carried by a person.

357. Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both. — Assault or criminal force in attempt wrongfully to confine a person.

358. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both. — Assault or criminal force on grave provocation.

Explanation.—The last section is subject to the same explanation as section 352.

Of Kidnapping, Abduction, Slavery and Forced Labour.[1]

359. Kidnapping is of two kinds: kidnapping from British India, and kidnapping from lawful guardianship.

360. Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from British India. — Kidnapping from British India.

361. Whoever takes or entices any minor under fourteen years of age, if a male, or under sixteen years of age, if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor — Kidnapping from lawful guardianship.

[1] Offences punishable under s. 374 are compoundable—*see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 345, Genl. Acts, Vol. V. As to stage of proceedings at which no composition is allowable without the leave of the Court, *see ibid*, sub section (5).

As to punishment for offences under ss. 363 to 369, enquired into by a Council of Elders in a Punjab Frontier District, in the North-West Frontier Province or in Baluchistan, *see* the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), s. 12, Punj. & N.-W. Code.

or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.—The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

Abduction.

362. Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Punishment for kidnapping.

363. Whoever kidnaps any person from British India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting in order to murder.

364. Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with transportation for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(*a*) A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrified to an idol. A has committed the offence defined in this section.

(*b*) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

Kidnapping or abducting with intent secretly and wrongfully to confine person.

365. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting woman to compel her marriage, etc.

366. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.

367. Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either descrip-

tion for a term which may extend to ten years, and shall also be liable to fine.

Wrongfully concealing or keeping in confinement kidnapped or abducted person.

368. Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

Kidnapping or abducting child under ten years with intent to steal from its person.

369. Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any moveable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Buying or disposing of any person as a slave.

370. Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Habitual dealing in slaves.

371. Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Selling minor for purposes of prostitution, etc.

372. Whoever sells, lets to hire, or otherwise disposes of any minor under the age of sixteen years with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Buying minor for purposes of prostitution, etc.

373. Whoever buys, hires or otherwise obtains possession of any minor under the age of sixteen years with intent that such minor shall be employed or used for the purpose of prostitution, or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Unlawful compulsory labour.

374. Whoeer unawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Of Rape.[1]

Rape.

375. A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married

Fifthly.—With or without her consent, when she is under [2][twelve] years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under [2][twelve] years of age, is not rape.

Punishment for rape.

376. Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Of Unnatural Offences.[3]

Unnatural offences.

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

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[1] As to whipping, *see* the Whipping Act, 1864 (6 of 1864), ss. 4, 6, Genl. Acts, Vol. I, the Whipping Act, 1900 (5 of 1900), s. 2, and in the Punjab Frontier Districts, the North-West Frontier Province and Baluchistan, the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), s. 6, Punj. & N.-W. Code.

As to punishment where an offence is enquired into by a Council of Elders in a Punjab Frontier District, in the North-West Frontier Province or in Baluchistan, *see* the same Regulation, s. 12.

[2] The word "twelve" was substituted for "ten" by the Indian Criminal Law Amendment Act, 1891 (10 of 1891), s. 1, Genl. Acts, Vol. IV.

[3] As to whipping, *see* the Whipping Act, 1864 (6 of 1864), ss. 4, 6, Genl. Acts, Vol. I, and in the Punjab Frontier Districts, in the North-West Frontier Province and Baluchistan, the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), s. 6, Punj. & N.-W. Code.

CHAPTER XVII.[1]

OF OFFENCES AGAINST PROPERTY.

Of Theft.[2]

378. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft. Theft.

Explanation 1.—A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which effects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be expressed or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations.

(*a*) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(*b*) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

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[1] As to punis'ment where an offence is enquired into by a Council of Elders in a Punjab Frontier District, in the North-West Frontier Province or in Baluchistan, *see* the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), s. 12, Punj. & N.-W. Code.

As to enhanced punishment for second conviction for certain offences under Chapter XVII, *see* s. 75, *supra*.

[2] As to duty to give information of offences punishable under s. 382, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 44, Genl. Acts, Vol. V.

As to whipping for offences under ss. 378, 380, 381, 382, *see* the Whipping Act, 1864 (6 of 1864), ss. 2 and 3, Genl. Acts, Vol. I.

As to whipping for offences under s. 382 in Upper Burma, *see* the Upper Burma Laws Act, 1898 (13 of 1898), s. 4 (3) (*b*) and Sch. II, Bur. Code; in the Punjab Frontier Districts, in the North-West Frontier Province and Baluchistan, *see* the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), s. 6.

As to punishment for offences under ss. 379 to 382, enquired into by a Council of Elders in a Punjab Frontier District, in the North-West Frontier Province or in Baluchistan, *see* s. 12 of the same Regulation.

As to extortion by threat of accusation of an offence under s. 377, *see* ss. 388 and 389, *infra*.

Dishonest abstraction, consumption or use of electrical energy is theft within the meaning of this section, *see* s. 39 of the Electricity Act, 1903 (3 of 1903), Genl. Acts, Vol. V.

(*c*) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(*d*) A being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(*e*) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(*f*) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(*g*) A finds a ring lying on the high-road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(*h*) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(*i*) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(*j*) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(*k*) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch in his own property, inasmuch as he takes it dishonestly.

(*l*) A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(*m*) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(*n*) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z, her husband. Here it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

(*o*) A is the paramour of Z's wife. She gives a valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(*p*) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

Punishment for theft.

379. Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Theft in dwelling-house, etc.

380. Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Theft by clerk or servant of property in possession of master.

381. Whoever being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

382. Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. Theft after preparation made for causing death, hurt or restraint, in order to the committing of the theft.

Illustrations.

(*a*) A commits theft on property in Z's possession; and, while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(*b*) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

Of Extortion. [1]

383. Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion." Extortion.

Illustrations.

(*a*) A threatens to publish a defamatory libel concerning Z, unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(*b*) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain moneys to A. Z signs and delivers the note. A has committed extortion.

(*c*) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(*d*) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

384. Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Punishment for extortion.

385. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Putting person in fear of injury in order to commit extortion.

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[1] As to the application of ss. 388 and 389 to offences under special or local laws, *see* s. 40, *supra*.

As to whipping for offences defined in ss. 388, 389, *see* the Whipping Act, 1864 (6 of 1864), ss. 2 and 3, General Acts, Vol. I.

As to whipping for offences defined in ss. 386 and 387 in Upper Burma, *see* the Upper Burma Laws Act, 1898 (13 of 1898), s. 4 (*3*), (*b*), Bur. Code.

Extortion by putting a person in fear of death or grievous hurt.

386. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Putting person in fear of death or of grievous hurt, in order to commit extortion.

387. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Extortion by threat of accusation of an offence punishable with death or transportation, etc.

388. Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with transportation for life.

Putting person in fear of accusation of offence in order to commit extortion.

389. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed or attempted to commit an offence punishable with death or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with transportation for life.

Of Robbery and Dacoity. [1]

Robbery. When theft is robbery.

390. In all robbery there is either theft or extortion.

Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away

[1] As to duty to give information of offences punishable under ss. 392 to 399 or 402, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 44, Genl. Acts, Vol. V, and the same section as amended for Burma by the Upper Burma Village Regulation, 1887 (14 of 1887), s. 4, Bur. Code; and by the Lower Burma Village Act, 1889 (3 of 1889), s. 5, as to robbery and dacoity, Bur. Code.

As to whipping for offences under ss. 390, 391, 393 and 394, *see* the Whipping Act, 1864 (6 of 1864), ss. 4, 6, *infra;* for offences under ss. 392 and 402 in Upper Burma, *see* the Upper Burma Laws Act, 1898 (13 of 1898), s. 4 (*3*) (*b*), Bur. Code; for offences under ss. 392-399 in the Punjab Frontier Districts, in the North-West Frontier Province and in Baluchistan, *see* the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), s. 6, Punj. & N.-W. Code.

As to punishment for offences under ss. 392-399 enquired into by a Council of Elders in a Punjab Frontier District, in the North-West Frontier Province or in Baluchistan, *see* s. 12 of the same Regulation.

property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.

Extortion is robbery if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations.

(*a*) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(*b*) A meets Z on the high-road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(*c*) A meets Z and Z's child on the high-road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(*d*) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such: but it is not robbery, unless Z is put in fear of the instant death of this child.

Dacoity.

391. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity."

Punishment for robbery.

392. Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

Attempt to commit robbery.

393. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Voluntarily causing hurt in committing robbery.

394. If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be

punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for dacoity.

395. Whoever commits dacoity shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Dacoity with murder.

396. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Robbery or dacoity, with attempt to cause death or grievous hurt.

397. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

Attempt to commit robbery or dacoity when armed with deadly weapon.

398. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

Making preparation to commit dacoity.

399. Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for belonging to gang of dacoits.

400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for belonging to gang of thieves.

401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs, or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Assembling for purpose of committing dacoity.

402. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Of Criminal Misappropriation of Property.

Dishonest misappro-

403. Whoever dishonestly misappropriates or converts to his own use any moveable property, shall be punished with imprisonment of either

description for a term which may extend to two years, or with fine, or with both. [1] priation of property.

Illustrations.

(*a*) A takes property belonging to Z out of Z's possession, in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(*b*) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(*c*) A and B being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration.

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it: it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

Illustrations.

(*a*) A finds a rupee on the high-road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

(*b*) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(*c*) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

[1] As to framing charge under section 403, *see* s. 222 of the Code of Criminal Procedure, 1898 (Act 5 of 1898), Genl. Acts, Vol. V.

(*d*) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(*e*) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(*f*) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

Dishonest misappropriation of property possessed by deceased person at the time of his death.

404. Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and, if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration.

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

Of Criminal Breach of Trust.

Criminal breach of trust.

405. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."[1]

Illustrations.

(*a*) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(*b*) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

(*c*) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lakh of rupees to A, with direction to A to invest the same in Company's paper. A dishonestly disobeys the directions, and employs the money in his own business. A has committed criminal breach of trust.

(*d*) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

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[1] As to framing charge under section 405, *see* s. 222 of the Code of Criminal Procedure, 1898 (Act 5 of 1898), Genl. Acts, Vol. V.

(*e*) A, a Revenue-officer, is entrusted with public money, and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(*f*) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

Punishment for criminal breach of trust.

406. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Criminal breach of trust by carrier, etc.

407. Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by clerk or servant.

408. Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by public servant, or by banker, merchant or agent.

409. Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

[1] *Of the receiving of Stolen Property.*

Stolen property.

410. Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which [2] * * [2] * * criminal breach of trust has been committed, is designated as "stolen property," [3][whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India]. But, if

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[1] As to whipping for the offence defined in s. 411, *see* the Whipping Act, 1864 (6 of 1864), ss. 2, 3, *infra;* for the offence defined in s. 412, *see ibid;* also as to Burma, the Burma Laws Act, 1898 (13 of 1898), s. 4 (*3*) (*b*), Bur. Code; for the offence defined in s. 413, *see* the Whipping Act, 1864 (6 of 1864), ss. 4, 6, *infra.*

As to punishment for offences under ss. 411-414, enquired into by a Council of Elders in a Punjab Frontier District, in the North-West Frontier Province or in Baluchistan, *see* the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), s. 12, Punj. & N.-W. Code.

[2] The word "the" before the words "offence of" was repealed by the Repealing and Amending Act, 1891 (12 of 1891), and the words "offence of" were repealed by the Indian Penal Code Amendment Act, 1882 (8 of 1882), s. 9, Genl. Acts, Vol. III.

[3] These words were inserted by the Indian Penal Code Amendment Act, 1882 (8 of 1882), s. 9, Genl. Acts, Vol. III.

such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

Dishonestly receiving stolen property.

411. Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Dishonestly receiving property stolen in the commission of a dacoity.

412. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Habitually dealing in stolen property.

413. Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Assisting in concealment of stolen property.

414. Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Of Cheating.

Cheating.

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat."

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations.

(*a*) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(*b*) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(*c*) A, by executing to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(*d*) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(*e*) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(*f*) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to re-pay it. A cheats.

(*g*) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(*h*) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(*i*) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

Cheating by personation.

416. A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations.

(*a*) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(*b*) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

Punishment for cheating.

417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.

418. Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for cheating by personation.

419. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Cheating and dishonestly inducing delivery of property.

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valu-

able security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Of Fraudulent Deeds and Dispositions of Property.

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

421. Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonestly or fraudulently preventing debt being available for creditors.

422. Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.

423. Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent removal or concealment of property.

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Of Mischief. [1]

Mischief.

425. Whoever, with intent to cause, or knowing that he is likely to

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As to duty to give information of offences punishable under s. 435 or 436, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 44, Genl. Acts, Vol. V.

Offences punishable under ss. 426, 427 are in certain cases compoundable—*see ibid*, s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, *see ibid*, sub-section (*5*).

As to whipping in the Punjab Frontier Districts, in the North-West Frontier Province and in Baluchistan for offences punishable under ss. 427 to 429, 435, 436, *see* the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), s. 6, Punj. & N.-W. Code; in Upper Burma for offences punishable under ss. 435, 436 and 440, *see* the Upper Burma Laws Act, 1898 (13 of 1898), s. 4 (*3*) (*b*), Bur. Code.

As to punishment for offences under ss. 427, 429, 435 and 436, enquired into by a Council of Elders in a Punjab Frontier District, in the North-West Frontier Province or in Baluchistan, *see* s. 12 of the same Regulation.

cause, wrongful loss or damage to the public or to any person, causes the destruction of any property or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief."

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations.

(*a*) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.

(*b*) A introduces water into an ice-house belonging to Z, and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(*c*) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(*d*) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(*e*) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(*f*) A causes a ship to be cast away intending thereby to cause damage to Z, who has lent money on bottomry on the ship. A has committed mischief.

(*g*) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(*h*) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

Punishment for mischief.

426. Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Mischief causing damage to the amount of fifty rupees.

427. Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Mischief by killing or maiming animal of the value of ten rupees.

428. Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.

429. Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to works of irrigation or by wrongfully diverting water.

430. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to public road, bridge, river or channel.

431. Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river, or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by causing inundation or obstruction to public drainage attended with damage.

432. Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by destroying, moving or rendering less useful a light-house or sea-mark.

433. Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Mischief by destroying or moving, etc., a land-mark fixed by public authority.

434. Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.

435. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards, [1][or (where the property is agricultural produce) ten rupees or upwards], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Mischief by fire or explosive substance with intent to

436. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of

[1] These words were inserted by the Indian Penal Code Amendment Act, 1882 (8 of 1882), s. 10, Genl. Acts, Vol. III.

worship or as a human dwelling or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. destroy house, etc.

437. Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden.

438. Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Punishment for the mischief described in section 437 committed by fire or explosive substance.

439. Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc.

440. Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine. Mischief committed after preparation made for causing death or hurt.

Of Criminal Trespass.

441. Whoever enters into or upon property in the possession of Criminal trespass.

[1] As to the application of ss. 441 and 445 to offences under special or local laws, *see* s. 40, *supra*. As to duty to give information of offences punishable under ss. 449, 450 or 456 to 460, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 44, Genl. Acts, Vol. V. *See* also (as to offences punishable under ss. 449, 450, 457, 458, 459 or 460) s. 45.

Offences punishable under ss. 447 and 448 are compoundable—*see ibid*, s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, *see ibid*, sub-section (*5*).

As to whipping for offences defined in ss. 443-446, *see* the Whipping Act, 1864 (6 of 1864), ss. 2, 3, 4, 6, *infra*.

As to whipping for offences punishable under ss. 448-460 (in the Punjab Frontier Districts, in the North-West Frontier Province, and in Baluchistan), *see* the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), s. 6, Punj. & N.-W. Code; for offences punishable under ss. 455, 458, 459 and 460 in Upper Burma, *see* the Upper Burma Laws Act, 1898 (13 of 1898), s. 4 (*3*) (*b*), Bur. Code.

As to punishment for offences under ss. 448-460, enquired into by a Council of Elders in a Punjab Frontier District, in the North-West Frontier Province or in Baluchistan, *see* the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), s. 12, Punj. & N.-W. Code.

another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,

or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,

is said to commit "criminal trespass."

House-trespass.

442. Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass."

Explanation.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

Lurking house-trespass.

443. Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass."

Lurking house-trespass by night.

444. Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night."

House-breaking.

445. A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:—

First.—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly.—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal

force or committing an assault, or by threatening any person with assault.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation.—Any out-house, or building occupied with a house and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations.

(*a*) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(*b*) A commits house-trespass by creeping into a ship at a port-hole between decks This is house-breaking.

(*c*) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(*d*) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(*e*) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(*f*) A finds the key of Z's house door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(*g*) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(*h*) Z, the door-keeper of Y, is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

House-breaking by night.

446. Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night."

Punishment for criminal trespass.

447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Punishment for house-trespass.

448. Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

House-trespass in order to commit offence punishable with death.

449. Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to commit offence punishable with transportation for life.

450. Whoever commits house-trespass in order to the committing of any offence punishable with transportation for life, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to commit

451. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with im-

offence punishable with imprisonment.

prisonment of either description for a term which may extend to two years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

House-trespass after preparation for hurt, assault or wrongful restraint.

452. Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall be liable to fine.

Punishment for lurking house-trespass or house-breaking.

453. Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.

454. Whoever commits lurking house-trespass or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint.

455. Whoever commits lurking house-trespass, or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for lurking house-trespass or house-breaking by night.

456. Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.

457. Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

Lurking house-trespass or house-break-

458. Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any per-

son, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

ing by night after preparation for hurt, assault or wrongful restraint.

459. Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

460. If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

All persons jointly concerned in lurking house-trespass or house breaking by night punishable where death or grievous hurt caused by one of them.

461. Whoever dishonestly, or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonestly breaking open receptacle containing property.

462. Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for same offence when committed by person entrusted with custody.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS [1] AND TO TRADE OR PROPERTY MARKS.

463. Whoever makes any false document or part of a document, with

Forgery.

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[1] As to authority for instituting prosecutions under ss. 463, 471, 475 or 476, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), Genl. Acts, Vol. V.

As to whipping for the offences defined in ss. 463 and 466 to 469, *see* the Whipping Act, 1864 (6 of 1864), ss. 4 and 6, *infra*.

intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Making a false document.

464. A person is said to make a false document—

First—Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

Secondly—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or the nature of the alteration.

Illustrations.

(*a*) A has a letter of credit upon B for rupees 10,000, written by Z. A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 1,00,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(*b*) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase-money. A has committed forgery.

(*c*) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(*d*) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable, and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(*e*) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(*f*) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(*g*) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "Pay to Z or his order" and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(*h*) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(*i*) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and, by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(*j*) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(*k*) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

Explanation 1.—A man's signature of his own name may amount to forgery.

Illustrations.

(*a*) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(*b*) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(*c*) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable: here A has committed forgery.

(*d*) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(*e*) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration.

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

Punishment for forgery.

465. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Forgery of record of Court or of public register, etc.

466. Whoever forges a document, purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Forgery of valuable security, will, etc.

467. Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, moveable property or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Forgery for purpose of cheating.

468. Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Forgery for purpose of harming reputation.

469. Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Forged document.

470. A false document made wholly or in part by forgery is designated "a forged document."

Using as genuine a forged document.

471. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 467.

472. Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467 of this Code, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise.

473. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this Chapter other than section 467, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it as genuine.

474. Whoever has in his possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466 of this Code, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and, if the document is one of the description mentioned in section 467, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material.

475. Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.

476. Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document other than the documents described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulent cancellation, destruction, etc., of will, authority to adopt, or

477. Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or defaces, or attempts to cancel, destroy or deface, or secretes or attempts to secrete any document which is or purports to be a will, or an authority

valuable security.

to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Falsification of accounts.

[1] **477A.** Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, paper, writing, valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.

[2] *Of Trade, Property and Other Marks.*

Trade mark.

478. A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade mark,

and for the purposes of this Code the expression "trade mark" includes any trade mark which is registered in the register of trade marks kept under the Patents, Designs and Trade Marks Act, 1883, and any trade mark which, either with or without registration, is protected by law in any British possession or Foreign State to which the provisions of the one hundred and third section of the Patents, Designs and Trade Marks Act, 1883, are, under Order in Council, for the time being applicable. 46 & 47 Vict. c. 57.

Property mark.

479. A mark used for denoting that moveable property belongs to a particular person is called a property mark.

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[1] S. 477A was added by the Criminal Law Amendment Act, 1895 (3 of 1895), s. 4, Genl. Acts, Vol. IV.

[2] Ss. 478 to 489 were substituted for the original sections by the Indian Merchandise Marks Act, 1889 (4 of 1889), s. 3, Genl. Acts, Vol. IV.

As to costs of defence or prosecution, and limitation of prosecutions, under these sections, *see ibid*, ss. 14, 15.

As to unintentional contravention of ss. 480-482 or 485, *see ibid*, s. 8.

As to forfeiture of goods on contravention of s. 482 or ss. 486-488, *see ibid*, s. 9.

Using a false trade mark.

480. Whoever marks any goods or any case, package or other receptacle containing goods, or uses any case, package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade mark.

Using a false property mark.

481. Whoever marks any moveable property or goods or any case, package or other receptacle containing moveable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

Punishment for using a false trade mark or property mark.

482. Whoever uses any false trade mark or any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Counterfeiting a trade mark or property mark used by another

483. Whoever counterfeits any trade mark or property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Counterfeiting a mark used by a public servant.

484. Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place, or that the property is of a particular quality or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Making or possession of any instrument for counterfeiting a trade mark or property mark.

485. Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, or has in his possession a trade mark or property mark for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Selling goods marked with a counterfeit

486. Whoever sells, or exposes, or has in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade mark or property mark affixed to or impressed upon the same or to

trade mark or property mark.

or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves—

(*a*) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and

(*b*) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(*c*) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Making a false mark upon any receptacle containing goods.

487. Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for making use of any such false mark.

488. Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

Tampering with property mark with intent to cause injury.

489. Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

[1] *Of Currency-Notes and Bank-Notes.*

Counterfeiting currency-notes or bank-notes.

489A. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—For the purposes of this section and of sections 489B, 489C and 489D, the expression "bank-note" means a promissory note or

[1] Ss. 489A to 489D were inserted by the Currency Notes Forgery Act, 1899 (12 of 1899), s. 2, Genl. Acts, Vol. V.

engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for, money.

Using as genuine forged or counterfeit currency-notes or bank-notes.

[1] **489B.** Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Possession of forged or counterfeit currency-notes or bank-notes.

[1] **489C.** Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes.

[1] **489D.** Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

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[2] CHAPTER XIX.

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

Breach of contract of service during voyage or journey.

490. Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person or any property from one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits so to do, except in the case of illness or ill-treatment, shall be punished with imprisonment of either description for

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[1] *See* footnote on page 365.

[2] Cognizance may be taken of an offence under Ch. XIX only on complaint by an aggrieved party—*see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 198, Genl. Acts, Vol. V.

Offences punishable under this Chapter are compoundable—*see ibid*, s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, *see ibid*, sub-section (*5*).

a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

Illustrations.

(*a*) A, a palanquin bearer, being bound by legal contract to carry Z from one place to another, runs away in the middle of the stage. A has committed the offence defined in this section.

(*b*) A, a coolie, being bound by lawful contract to carry Z's baggage from one place to another, throws the baggage away. A has committed the offence defined in this section.

(*c*) A, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another, illegally omits to do so. A has committed the offence defined in this section.

(*d*) A, by unlawful means, compels B, a coolie, to carry his baggage. B in the course of the journey puts down the baggage and runs away. Here, as B was not lawfully bound to carry the baggage, he has not committed any offence.

Explanation.—It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is legally made with any person, either expressly or impliedly, by the person who is to perform the service.

Illustrations.

A contracts with a dâk company to drive his carriage for a month. B employs the dâk company to convey him on a journey, and during the month the company supplies B with a carriage which is driven by A. A in the course of the journey voluntarily leaves the carriage. Here, although A did not contract with B, A is guilty of an offence under this section.

Breach of contract to attend on and supply wants of helpless person.

491. Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

Breach of contract to serve at distant place to which servant is conveyed at master's expense.

492. Whoever, being bound by lawful contract in writing to work for another person as an artificer, workman or labourer, for a period not more than three years, at any place within British India to which by virtue of the contract he has been or is to be conveyed at the expense of such other, voluntarily deserts the service of that other during the continuance of his contract, or without reasonable cause refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description for a term not exceeding one month, or with fine not exceeding double the amount of such expense, or with both, unless the employer has ill-treated him or neglected to perform the contract on his part.

[1] CHAPTER XX.

OF OFFENCES RELATING TO MARRIAGE.

Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.

493. Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Marrying again during lifetime of husband or wife.

494. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction;

nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.

495. Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Marriage ceremony fraudulently gone through

496. Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either descrip-

[1] Cognizance may be taken of an offence under s. 493, 494, 495 or 496 only on complaint by an aggrieved party, and of an offence under s. 497 or 498 only on complaint by the husband or guardian of the woman—*see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), ss. 198, 199, Genl. Acts, Vol. V.

Offences punishable under ss. 497 and 498 are compoundable—*see ibid*, s. 345. As to stage of proceedings under ss. 497 and 498, at which no composition is allowable without the leave of the Court, *see ibid*, sub-section (*5*).

As to punishment for offences under ss. 497 and 498, enquired into by a Council of Elders in a Punjab Frontier District, in the North-West Frontier Province, or in Baluchistan, *see* the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), s. 12, Punj. & N.-W. Code.

without lawful marriage.

tion for a term which may extend to seven years, and shall also be liable to fine.

Adultery.

497. Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the [1] wife shall not be punishable as an abettor.

Enticing or taking away or detaining with criminal intent a married woman.

498. Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

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[2] CHAPTER XXI.

OF DEFAMATION.

Defamation.

499. Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

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[1] In the Punjab Frontier Districts, in the North-West Frontier Province and Baluchistan a married woman is punishable for adultery—*see* the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), ss. 12 and 30, Punj. & N.-W. Code.

[2] Cognizance may be taken of an offence under Ch. XXI only on complaint by an aggrieved party—*see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 198, Genl. Acts, Vol. V.

Offences punishable under ss. 500, 501 or 502 are compoundable—*see ibid*, s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, *see ibid*, sub-section (*5*).

For power to order the destruction of copies of the thing in respect of which a conviction under s. 501 or s. 502 is had, *see ibid*, s. 521.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustration.

(*a*) A says—" Z is an honest man; he never stole B's watch " : intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(*b*) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(*c*) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

Imputation of truth which public good requires to be made or published.

First Exception.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Public conduct of public servants.

Second Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Conduct of any person touching any public question.

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character so far as his character appears in that conduct, and no further.

Illustration.

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Publication of reports of proceedings of Courts.

Fourth Exception.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice is a Court within the meaning of the above section.

Merits of case decided in Court or conduct of

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct

witnesses and others concerned.

of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations.

(*a*) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(*b*) But if A says—"I do not believe what Z asserted at that trial, because I know him to be a man without veracity," A is not within this exception, inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

Merits of public performance.

Sixth Exception.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations.

(*a*) A person who publishes a book, submits that book to the judgment of the public.

(*b*) A person who makes a speech in public, submits that speech to the judgment of the public.

(*c*) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(*d*) A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind." A is within this exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(*e*) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine," A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Censure passed in good faith by person having lawful authority over another.

Seventh Exception.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration.

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a school-master, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Accusation preferred in good faith to authorized person.

Eighth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustrations.

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

Imputation made in good faith by person for protection of his or other's interests.

Ninth Exception.—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

Illustrations.

(*a*) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(*b*) A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Caution intended for good of person to whom conveyed or for public good.

Tenth Exception.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

Punishment for defamation.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Printing or engraving matter known to be defamatory.

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Sale of printed or engraved substance containing defamatory matter.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

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[1] CHAPTER XXII.

OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

Criminal intimidation.

503. Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom

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[1] Offences punishable under s. 504, and certain offences punishable under s. 506, are compoundable—*see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 345, Genl. Acts, Vol. V. As to stage of proceedings at which no composition is allowable without the leave of the Court, *see ibid*, sub-section (5).

As to whipping (in Upper Burma) for the offence mentioned in s. 506, *see* the Upper Burma Laws Act, 1898 (13 of 1898), s. 4 (3) (*b*) and Sch. II, Bur. Code.

that person is interested, with intent to cause alarm to that person or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustrations.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

Intentional insult with intent to provoke breach of the peace.

504. Whoever intentionally insults, and thereby gives provocation to, any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Statements conducing to public mischief.

[1] **505.** Whoever makes, publishes or circulates any statement, rumour or report,—

(*a*) with intent to cause, or which is likely to cause, any officer, soldier or sailor in the Army or Navy of Her Majesty or in the Royal Indian Marine or in the Imperial Service Troops to mutiny or otherwise disregard or fail in his duty as such; or

(*b*) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity; or

(*c*) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community;

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Exception.—It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it without any such intent as aforesaid.

Punishment for criminal intimidation.

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

[1] S. 505 was repealed and the present section substituted therefor by s. 6 of the Indian Penal Code Amendment Act, 1898 (4 of 1898).

and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. If threat be to cause death or grievous hurt, etc.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section. Criminal intimidation by an anonymous communication.

508. Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, Act caused by inducing person to believe that he will be rendered an object of the Divine displeasure.

by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations.

(*a*) A sits dhurna at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of Divine displeasure. A has committed the offence defined in this section.

(*b*) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both. Word, gesture or act intended to insult the modesty of a woman.

510. Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both. Misconduct in public by a drunken person.

CHAPTER XXIII.[1]

OF ATTEMPTS TO COMMIT OFFENCES.

Punishment for attempting to commit offences punishable with transportation or imprisonment.

511. Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence, for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(*a*) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(*b*) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

THE POLICE ACT, 1861.

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[1] Ch. XXIII applies to offences punishable under ss. 121A, 294A and 304A—*see* the Indian Penal Code Amendment Act, 1870 (27 of 1870), s. 13, Genl. Acts, Vol. II.

Attempts to commit certain offences are compoundable—*see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 345, Genl. Acts, Vol. V. As to stage of proceedings at which no composition is allowable without the leave of the Court, *see ibid*, sub-section (5).

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FORM.

ACT No. V OF 1861.[1]

[*22nd March, 1861.*]

An Act for the Regulation of Police.

Preamble.

WHEREAS it is expedient to re-organize the police and to make it a more efficient instrument for the prevention and detection of crime; It is enacted as follows:—

Interpretation-clause.

1. The following words and expressions in this Act shall have the

[1] Short-title, "The Police Act, 1861." *See* the Indian Short-titles Act, 1897 (14 of 1897), General Acts, Vol. IV.
Act 5 of 1861 has been applied to—

Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. (4) (*1*), and Schedule I, Bur. Code. (As to its extension to Upper Burma, as amended by subsequent enactments under s. 46, *see* notes to that section, *infra.*) (It has been extended to the Shan States, except Khamti Long and Möng Mit, by the Shan States Law and Criminal Justice Order, 1895. *See* Bur. Code. It is also in force in the State of Möng Mit (Momeik), with its dependency Möng Lang, *see* Burma Gazette, 1896, Pt. I, p. 252);

meaning assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say,—

[1] the words "Magistrate of the district" shall mean the chief officer charged with the executive administration of a district and exercising the powers of a Magistrate, by whatever designation the chief officer charged with such executive administration is styled:

the word "Magistrate" shall include all persons within the general police-district, exercising all or any of the powers of a Magistrate:

the word "police" shall include all persons who shall be enrolled under this Act:

the words "general police-district" shall embrace any [2] presidency, province or place, or any part of any presidency, province or place, in which this Act shall be ordered to take effect:

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the Sánthal Parganas by the Sánthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3, as amended by the Sánthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), Ben. Code, Vol. 1;

the Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (9 of 1874), s. 3, Bur. Code;

British Baluchistan by the British Baluchistan Laws Regulation, 1890 (1 of 1890), s. 3, Bal. Code;

the Angul District by the Angul District Regulation, 1894 (1 of 1894), s. 3; Ben. Code, Vol. I;

the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (1 of 1900); and

the Town of Calcutta and its suburbs as modified by the Calcutta Police Act, 1898, by Ben. Act 1 of 1898, Ben. Code.

The Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely: the Districts of Hazaribagh, Lohardaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44) and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, *see* Gazette of India, 1881, Pt. I, p. 504; the Porahat Estate in the Singhbhum District, *see* Gazette of India, 1897, Pt. I, p. 1059, and under ss. 3 and 5A of the same Act, in the Pargana of Manpur, *see* Gazette of India, 1899, Pt. II, p. 419. The powers of a Local Government have been conferred on the Agent, Governor General, Central India, and also those of a High Court for the purposes of Act V of 1861.

It has been extended, by notification under s. 5 of the same Act, to the Kumaon and Garhwal Districts, *see* Gazette of India, 1891, Pt. 1, p. 185, and (with the exception of ss. 1, 3, 5, 6, 8, 11, 21, 28, 33, 41, 43, 46 and 47) to the Scheduled District of Coorg, *see* Gazette of India, 1888, Pt. I, pp. 88 and 323. Ss. 15, 15A, 16, 30, 30A, 31 and 32 have been extended to the Scheduled Districts in Ganjam and Vizagapatam, *see* Fort St. George Gazette, 1898, Pt. I, p. 667, and Gazette of India, 1898, Pt. I, p. 873.

It has been applied to the Baluchistan Agency Territories by the Baluchistan Agency Territories Laws Law, 1890, Bal. Code.

As to special enactments in force in Madras, Bombay and Lower Provinces of Bengal, and extensions of this Act under the power conferred by s. 46, *see* notes to that section.

As to special enactments for Military, Frontier or Rural Police in force in certain parts of British India, *see* note to s. 8.

As to the relaxation of the provisions of the Police Act, 1861 (5 of 1861), which restrict the employment of police-officers to the presidency, province or place of the Police establishment of which they are members, *see* the Police Act, 1888 (3 of 1888), Genl. Acts, Vol. IV.

[1] *Cf.* also s. 3 (*2*) of the Code of Criminal Procedure, 1898 (Act 5 of 1898), Genl. Acts, Vol. V.

[2] Under s. 2 of the Police Act, 1888 (3 of 1888), Genl. Acts, Vol. IV, the Governor General in Council, notwithstanding this provision, may create a general police-district, consisting of parts of two or more presidencies, provinces or places.

The Chittagong Hill Tracts have been declared to be a general police-district for the purposes of this Act, *see* the Chittagong Hill Tracts Regulation, 1900 (1 of 1900), s. 16, E. B. & A. Code, Vol. I.

[1][the words "District Superintendent" and "District Superintendent of Police" shall include any Assistant District Superintendent or other person [2] appointed by general or special order of the Local Government to perform all or any of the duties of a District Superintendent of Police under this Act in any district:]

the word "property" shall include any moveable property, money or valuable security:

words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number:

words importing the masculine gender shall include females:

the word "person" shall include a company or corporation:

the word "month" shall mean a calendar month:

[3] the word "cattle" shall, besides horned cattle, include elephants, camels, horses, asses, mules, sheep, goats and swine.

Constitution of the force.

[4] **2.** The entire police-establishment under a Local Government shall, for the purposes of this Act, be deemed to be one [5] police-force, and shall be formally enrolled; and shall consist of such number of officers and men, and shall be constituted in such manner, and the members of such force shall receive such pay, as shall from time to time be ordered by the Local Government, subject to the sanction of the Governor General of India in Council.

Superintendence in the Local Government.

3. The superintendence of the police throughout a general police-district shall vest in and, subject to the general control of the Governor General of India in Council, shall be exercised by the [6] Local Government to which such district is subordinate; and, except as authorized

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The North-West Frontier Province has been declared to be a general police-district for the purposes of this Act, *see* the North-West Frontier Province Law and Justice Regulation, 1901 (7 of 1901), s. 13, Punj. & N.-W. Code.

[1] This para. was inserted in s. 1 by the Police Act (1861) Amendment Act, 1895 (8 of 1895), s. 1, Genl. Acts, Vol. IV.

[2] For notification under this power for—

(1) Bombay, under the Act generally, *see* Bom. Govt. Gazette, 1908, Pt. I, p. 144.

(2) E. B. & Assam, under ss. 7 (*b*) and 13, *see* E. B. & A. Gazette, 1908, Pt. I, p. 313.

(3) Madras, *see* Mad. R. & O., Vol. I; and Fort St. George Gazette, 1908, Pt. I, p. 10.

[3] *Cf.* definition of "cattle" in s. 3 of the Cattle-trespass Act, 1871 (1 of 1871), Genl. Acts, Vol. II.

[4] S. 2, so far as it relates to the provinces under the administration of the Lieutenant-Governor of Bengal, was repealed by the Bengal Police Act, 1869 (7 of 1869), Ben. Code, Vol. IV.

[5] The police-force employed in cantonments is part of the general police-force under the Local Government, *see* the Cantonments Act, 1889 (13 of 1889), s. 12, Genl. Acts, Vol. IV.

See also note appended to s. 8, *infra*, as to enrolment of the police force in certain places.

[6] Under s. 1 of the Chief Commissioners Powers Act, 1867 (32 of 1867), the powers of a Local Government under the Police Act, 1861 (5 of 1861), have been delegated to the Chief Commissioners of Oudh, the Central Provinces and British (now Lower) Burma, *see* Gazette of India, 1868, p. 358, and 1869, p. 18.

The Chief Commissioners of Oudh and British Burma are now Lieutenant-Governors of the United Provinces of Agra and Oudh and of Burma, respectively.

As to Assam, *see* Notification No. 313, dated 12th September, 1894, Assam R. & O.

under the provisions of this Act, no person, officer or Court shall be empowered by the Local Government to appoint, supersede or control any police functionary.

Inspector-General of Police, etc.

4. The administration of the police throughout a general police-district shall be vested in an officer to be styled the Inspector-General of Police, and in such Deputy Inspectors-General and Assistant Inspectors-General as to the [1] Local Government shall seem fit.

The administration of the police throughout the local jurisdiction of the [2] Magistrate of the district shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District Superintendents as the Local Government shall consider necessary.

The Inspector-General and other officers above mentioned shall from time to time be appointed by the Local Government, and may be removed by the same authority.

Powers of Inspector-General. Exercise of powers.

5. The Inspector-General of Police shall have the full powers of a [3] Magistrate throughout the general police-district; but shall exercise those powers subject to such limitation as may from time to time be imposed by the Local Government.

6. [*Magisterial powers of police-officers.*] *Rep. by the Code of Criminal Procedure, 1882 (Act X of 1882).*

Appointment, dismissal, etc., of inferior officers.

[4] **7.** The appointment of all police-officers other than those mentioned in section 4 of this Act shall, under such [5] rules as the Local Government shall from time to time sanction, rest with the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General and District Superintendents of Police, who may, under such rules as aforesaid, at any time dismiss, suspend or reduce any police-officer whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same;

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[1] In the town and suburbs of Calcutta, the administration of the Police vests in the "Commissioner of Police." *See* s. 3 of Bengal Act 4 of 1866 (Calcutta Police), Ben. Code, Vol. IV.

[2] For rules and orders regarding powers of Magistrates and Commissioners in the United Provinces of Agra and Oudh, *see* U. P. List of R. & O. and the Police Manual.

[3] *i.e.*, the powers of a Magistrate of the first class, *see* s. 3 (*2*) of the Code of Criminal Procedure, 1898 (5 of 1898), Genl. Acts, Vol. V.

[4] A person appointed to the Burma police-force under this section is a Military police-officer within the meaning of the Burma Military Police Act, 1887 (15 of 1887), *see* s. 3 (*1*) of that Act, Bur. Code.

As to the disciplinary powers of a Commandant or Second-in-Command of Military Police in Burma over police-officers appointed under this section, *see* s. 12, *ibid.*

[5] For rules regarding the police-force in the Central Provinces, *see* Notification No. 3595, Cent. Prov. R. & O., and the Police Manual, Vol. I.

For rules as to finality of order of a Deputy Inspector-General of Police, Punjab—*see* Punjab List of R. & O.

For rules and orders regarding powers of Commissioners and Magistrates in the United Provinces of Agra and Oudh, *see* U. P. List of R. & O., and the Police Manual.

[1] or may award any one or more of the following punishments to any police-officer who shall discharge his duty in a careless or negligent manner, or who by any act of his own shall render himself unfit for the discharge thereof, namely:—

(*a*) fine to any amount not exceeding one month's pay;

(*b*) confinement to quarters for a term not exceeding fifteen days, with or without punishment drill, extra guard, fatigue or other duty;

(*c*) deprivation of good-conduct pay;

(*d*) removal from any office of distinction or special emolument.

Certificates to police-officers.

8. [2] Every police-officer so appointed shall receive on his appointment a certificate in the form annexed to this Act, under the seal of the Inspector-General or such other officer as the Inspector-General shall appoint, by virtue of which the person holding such certificate shall be vested with the powers, functions and privileges of a police-officer.

Surrender of certificate.

[3][Such certificate shall cease to have effect whenever the person named in it ceases for any reason to be a police-officer, and, on his ceasing to be such an officer, shall be forthwith surrendered by him to any officer empowered to receive the same.]

[3][A police-officer shall not by reason of being suspended from office

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[1] The second paragraph of s. 7 was substituted for the words "or fine police-officer to any amount not exceeding one month's pay who shall discharge his duty in a careless or negligent manner, or who, by any act of his own, shall render himself unfit for the discharge thereof," by the Police Act (1861) Amendment Act, 1895 (8 of 1895), s. 2, Genl. Acts, Vol. IV.

[2] As to enrolment, maintenance and discipline of—

(1) the Military Police-force employed in—

(*a*) the Andaman and Nicobar Islands, *see* the Andaman and Nicobar Islands Military Police Regulation, 1888 (2 of 1888), Gazette of India, 1888, Pt. 1, p. 391;

(*b*) Assam, *see* the Assam Military Police Regulation, 1890 (4 of 1890), E. B. & A. Code, Vol. I;

(*c*) Burma, *see* the Burma Military Police Act, 1887 (15 of 1887), Bur. Code;

(2) the Chittagong Hill Tracts Frontier Police, *see* the Chittagong Hill Tracts Frontier Police Regulation, 1881 (3 of 1881), E. B. & A. Code, Vol. I;

(3) the Rural Police in the Districts of Cachar and Sylhet, *see* the Sylhet and Cachar Rural Police Regulation, 1883 (1 of 1883), E. B. & A. Code, Vol. I;

(4) the Punjab Frontier Police-officers, *see* the Punjab Frontier Police-officers Regulation, 1893 (7 of 1893), Punj. & N.-W. Code;

(5) the Calcutta and Suburban Police, *see* Bengal Act 4 of 1866 (Calcutta Police) and Bengal Act 2 of 1866 (Calcutta Suburban Police), Ben. Code, Vol. IV;

(6) the Police establishment in municipal areas in the United Provinces of Agra and Oudh, *see* the United Provinces of Agra and Oudh Municipalities Act, 1900 (U. P. Act 1 of 1900), ss. 74—79 : U. P. Code, Vol. II;

(7) the Police establishment in municipal areas in the Punjab, *see* the Punjab Municipal Act, 1891 (20 of 1891), ss. 79 to 84, Punj. & N.-W. Code;

(8) the Rural Police in the Sánthal Parganas, *see* the Sánthal Parganas Rural Police Regulation, 1900 (3 of 1900), Ben. Code, Vol. I.

[3] These paragraphs were substituted for the original paragraph by the Police Act (1861) Amendment Act, 1895 (8 of 1895), s. 3, Genl. Acts, Vol. IV. That paragraph ran as follows :—

"Such certificate shall cease to have effect whenever the person named in it is suspended or dismissed or otherwise removed from employment in the police-force, and shall be immediately surrendered to the Superior Officer of such person or to some other officer empowered to receive the same."

cease to be a police-officer. During the term of such suspension the powers, functions and privileges vested in him as a police-officer shall be in abeyance, but he shall continue subject to the same responsibilities, discipline and penalties and to the same authorities, as if he had not been suspended.]

Police-officer not to resign without leave or two months' notice.

9. No police-officer shall be at liberty to withdraw himself from the duties of his office, unless expressly allowed to do so by the District Superintendent or by some other officer authorized to grant such permission, or, without the leave of the District Superintendent, to resign his office, unless he shall have given to his superior officer notice in writing, for a period of not less than two months, of his intention to resign.

Police-officers not to engage in other employment.

10. No police-officer shall engage in any employment or office whatever other than his duties under this Act, unless expressly permitted to do so in writing by the Inspector-General.

11. [*Police superannuation fund.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

Power of Inspector-General to make rules.

12. The Inspector-General of Police may, from time to time, subject to the approval of the Local Government, frame such orders and [1] rules as he shall deem expedient relative to the organization, classification and distribution of the police-force, the places at which the members of the force shall reside, and the particular services to be performed by them; their inspection, the description of arms, accoutrements and other necessaries to be furnished to them; the collecting and communicating by them of intelligence and information; and all such other orders and rules relative to the police-force as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties.

Additional police-officers employed at cost of individuals.

13. It shall be lawful for the Inspector-General of Police, or any Deputy Inspector-General, or Assistant Inspector-General, or for the District Superintendent, subject to the general direction of the Magistrate of the district, on the application of any person showing the necessity thereof, to depute any additional number of police-officers to keep the peace at any place within the general police-district, and for such time as shall be deemed proper. Such force shall be exclusively under the orders of the District Superintendent, and shall be at the charge of the person making the application:

Provided that it shall be lawful for the person on whose application such deputation shall have been made, on giving one month's notice in

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[1] For rules under s. 12 for—

(1) Bengal, *see* Ben. Stat. R. & O., Vol. II, p. 456.
(2) Burma, *see* Bur. R. M., Vol. 1.
(3) Central Provinces, *see* Cent. Provs. R. &. O.
(4) Coorg, *see* Coorg R. &. O.
(5) United Provinces of Agra and Oudh, *see* U. P. List of R. & O., Vol. I, and the Police Manual.

writing to the Inspector-General, Deputy Inspector-General, or Assistant Inspector-General, or to the District Superintendent, to require that the police-officers so deputed shall be withdrawn; and such person shall be relieved from the charge of such additional force from the expiration of such notice.

Appointment of additional force in the neighbourhood of railway and other works.

14. Whenever any railway, canal or other public work, or any manufactory or commercial concern shall be carried on, or be in operation in any part of the country, and it shall appear to the Inspector-General that the employment of an additional police-force in such place is rendered necessary by the behaviour or reasonable apprehension of the behaviour of the persons employed upon such work, manufactory or concern, it shall be lawful for the Inspector-General, with the consent of the Local Government, to depute such additional force to such place, and to employ the same so long as such necessity shall continue, and to make orders, from time to time, upon the person having the control or custody of the funds used in carrying on such work, manufactory or concern, for the payment of the extra force so rendered necessary, and such person shall thereupon cause payment to be made accordingly.

Quartering of additional police in disturbed or dangerous districts.

15.[1] (*1*) It shall be lawful for the Local Government, by proclamation to be notified in the official Gazette, and in such other manner as the Local Government shall direct, to declare that any area subject to its authority has been found to be in a disturbed or dangerous state, or that, from the conduct of the inhabitants of such area or of any class or section of them, it is expedient to increase the number of police.

(*2*) It shall thereupon be lawful for the Inspector-General of Police, or other officer authorized by the Local Government in this behalf, with the sanction of the Local Government, to employ any police-force in addition to the ordinary fixed complement to be quartered in the area specified in such proclamation as aforesaid.

(*3*) Subject to the provisions of sub-section (*5*) of this section, the cost of such additional police-force shall be borne by the inhabitants of such area described in the proclamation.

(*4*) The Magistrate of the district, after such enquiry as he may deem necessary, shall apportion such cost among the inhabitants who are, as aforesaid, liable to bear the same and who shall not have been exempted under the next succeeding sub-section. Such apportionment shall be made according to the Magistrate's judgment of the respective means within such area of such inhabitants.

(*5*) It shall be lawful for the Local Government by order to exempt any persons or class or section of such inhabitants from liability to bear any portion of such cost.

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[1] This section was substituted by the Police Act (1861) Amendment Act, 1895 (8 of 1895), s. 4, Genl. Acts, Vol. IV.

(*6*) Every proclamation issued under sub-section (*1*) of this section shall state the period for which it is to remain in force, but it may be withdrawn at any time or continued from time to time for a further period or periods as the Local Government may in each case think fit to direct.

Explanation.—For the purposes of this section, "inhabitants" shall include persons who themselves or by their agents or servants occupy or hold land or other immoveable property within such area, and landlords who themselves or by their agents or servants collect rents direct from raiyats or occupiers in such area, notwithstanding that they do not actually reside therein.

Awarding compensation to sufferers from misconduct of inhabitants or persons interested in land.

[1]**15A.** (*1*) If, in any area in regard to which any proclamation notified under the last preceding section is in force, death or grievous hurt or loss of, or damage to, property has been caused by or has ensued from the misconduct of the inhabitants of such area or any class or section of them, it shall be lawful for any person, being an inhabitant of such area, who claims to have suffered injury from such misconduct to make, within one month from the date of the injury or such shorter period as may be prescribed, an application for compensation to the Magistrate of the district or of the sub-division of a district within which such area is situated.[2]

(*2*) It shall thereupon be lawful for the Magistrate of the District, with the sanction of the Local Government after such enquiry as he may deem necessary, and whether any additional police-force has or has not been quartered in such area under the last preceding section, to—

(*a*) declare the persons to whom injury has been caused by or has ensued from such misconduct;

(*b*) fix the amount of compensation to be paid to such persons and the manner in which it is to be distributed among them; and

(*c*) assess the proportion in which the same shall be paid by the inhabitants of such area other than the applicant who shall not have been exempted from liability to pay under the next succeeding sub-section:

Provided that the Magistrate shall not make any declaration or assessment under this sub-section, unless he is of opinion that such injury as aforesaid has arisen from a riot or unlawful assembly within such area, and that the person who suffered the injury was himself free from blame in respect of the occurrences which led to such injury.

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[1] S. 15A was inserted by the Police Act (1861) Amendment Act, 1895 (8 of 1895), s. 5, Genl. Acts, Vol. IV.

[2] As to rules regulating proceedings in Burma under this section, *see* note to s. 46 (*2*) (*b*), *infra*.

(*3*) It shall be lawful for the Local Government by order, to exempt any persons or class or section of such inhabitants from liability to pay any portion of such compensation.

(*4*) Every declaration or assessment made or order passed by the Magistrate of the district under sub-section (*2*) shall be subject to revision by [1][the Commissioner of the Division or] the Local Government, but save as aforesaid shall be final.

(*5*) No civil suit shall be maintainable in respect of any injury for which compensation has been awarded under this section.

(*6*) *Explanation.*—In this section the word "inhabitants" shall have the same meaning as in the last preceding section.

Recovery of moneys payable under sections 13, 14, 15 and 15A, and disposal of same when recovered.

[2]**16.** (*1*) All moneys payable under sections 13, 14, 15 and 15A shall be recoverable by the Magistrate of the district in the manner provided by [3] sections 386 and 387 of the Code of Criminal Procedure, 1882, for the recovery of fines, or by suit in any competent Court. X of 1882.

(*2*) All moneys paid or recovered under sections 13, 14 and 15 shall be credited to a fund to be called "The General Police Fund," and shall be applied to the maintenance of the police-force under such orders as the Local Government shall pass.

(*3*) All moneys paid or recovered under section 15A shall be paid by the Magistrate of the district to the persons to whom and in the proportions in which the same are payable under that section.

Special police-officers.

17. When it shall appear that any unlawful assembly, or riot or disturbance of the peace has taken place, or may be reasonably apprehended, and that the police-force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot or disturbance of the peace has occurred, or is apprehended, it shall be lawful for any police-officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such police-officers may require to act as special police-officers for such time and within such limits as he shall deem necessary; and the Magistrate to whom such application is made shall, unless he see cause to the contrary, comply with the application.

Powers of special police-officers.

18. Every special police-officer so appointed shall have the same powers, privileges and protection, and shall be liable to perform the same duties and shall be amenable to the same penalties, and be subordinate to the same authorities, as the ordinary officers of police.

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[1] In the North-West Frontier Province the words in brackets should be omitted, *vide* the North-West Frontier Province Law and Justice Regulation, 1901 (7 of 1901), First Schedule, Punj. & N.-W. Code.

[2] Section 16 was substituted by the Police Act (1861) Amendment Act, 1895 (8 of 1895), s. 6, Genl. Acts, Vol. IV.

[3] See now the same sections of the Code of Criminal Procedure, 1898 (5 of 1898), Genl. Acts, Vol. V.

Refusal to serve as special police-officers.

19. If any person being appointed a special police-officer as aforesaid shall, without sufficient excuse, neglect or refuse to serve as such, or to obey such lawful order or direction as may be given to him for the performance of his duties, he shall be liable, upon conviction before a Magistrate, to a fine not exceeding fifty rupees for every such neglect, refusal or disobedience.

Authority to be exercised by police-officers.

[1] **20.** Police-officers enrolled under this Act shall not exercise any authority, except the authority provided for a police-officer under this Act and any Act which shall hereafter be passed for regulating criminal procedure.

Village-police-officers.

21. Nothing in this Act shall affect any hereditary or other village-police-officer, unles such officer shall be enrolled as a police-officer under this Act. When so enrolled, such officer shall be bound by the provisions of the last preceding section. No hereditary or other village-police-officer shall be enrolled without his consent and the consent of those who have the right of nomination.

Police-chaukidars in the Presidency of Fort William.

If any police-officer appointed under [2] Act XX of 1856 (*to make better provision for the appointment and maintenance of Police-chaukidars in Cities, Towns, Stations, Suburbs and Bazars in the Presidency of Fort William in Bengal*) is employed out of the district for which he shall have been appointed under that Act, he shall not be paid out of the rates levied under the said Act for that district.

Police-officers always on duty and may be employed in any part of district.

22. Every police-officer shall, for all purposes in this Act contained, be considered to be always on duty, and may at any time be employed as a police-officer in any part of the general police-district.

Duties of police-officers.

23. It shall be the duty of every police-officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisances; to detect and bring offenders to justice and to apprehend all persons whom he is legally authorized to apprehend, and for whose apprehension sufficient ground exists: and it shall be lawful for every police-officer, for any of the purposes mentioned in this section, without a warrant, to enter and inspect any drinking-shop, gaming-house or other place of resort of loose and disorderly characters.

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[1] For some cases in which the application of s. 20 has been restricted, *see* the Assam Police-officers Regulation, 1883 (2 of 1883), ss. 2 and 3, E. B. & A. Code, Vol. I; the Burma Military Police Act, 1887 (15 of 1887), s. 11, Bur. Code.

It has been declared not to apply to any Assistant District Superintendent of Police whose duties are exercised in connection with the unenrolled border Police-force, *see* s. 2 of the Punjab Frontier Police-officers Regulation, 1893 (7 of 1893), Punj. & N.-W. Code.

[2] Punj. & N.-W. Code; U. P. Code, Vol. I, and Aj. Code.

Police-officers may lay information, etc.

24. It shall be lawful for any police-officer to lay any information before a Magistrate, and to apply for a summons, warrant, search-warrant or such other legal process as may by law issue against any person committing an offence.[1] * * * * * * * *

Police-officers to take charge of unclaimed property, and be subject to Magistrate's orders as to disposal.

25. It shall be the duty of every police-officer to take charge of all unclaimed property, and to furnish an inventory thereof to the Magistrate of the district.

The police-officers shall be guided as to the disposal of such property by such orders as they shall receive from the Magistrate of the district.

Magistrate may detain property and issue proclamation.

26. The Magistrate of the district may detain the property and issue a proclamation, specifying the articles of which it consists, and requiring any person who has any claim thereto to appear and establish his right to the same within six months from the date of such proclamation.

[2][(2) The provisions of section 525 of the Code of Criminal Procedure, 1882, shall be applicable to property referred to in this section.] X of 1882.

Confiscation of property if no claimant appears.

[3] **27.** (*1*) If no person shall within the period allowed claim such property, or the proceeds thereof, if sold, it may, if not already sold under sub-section (*2*) of the last preceding section, be sold under the orders of the Magistrate of the district.

(*2*) The sale-proceeds of property sold under the preceding sub-section and the proceeds of property sold under section 26 to which no claim has been established shall be at the disposal of Government.

Persons refusing to deliver up certificate, etc., on ceasing to be police-officers.

28. Every person, having ceased to be an enrolled police-officer under this Act, who shall not forthwith deliver up his certificate, and the clothing, accoutrements, appointments and other necessaries which shall have been supplied to him for the execution of his duty, shall be liable, on conviction before a Magistrate, to a penalty not exceeding two hundred rupees, or to imprisonment with or without hard labour, for a period not exceeding six months, or to both.

Penalties for neglect of duty, etc.

29. Every police-officer who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months, [4][or who, being absent on

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[1] The words " and to prosecute such person up to final judgment " were repealed by the Code of Criminal Procedure, 1882 (Act 10 of 1882).

[2] This sub-section was added by the Police Act (1861) Amendment Act, 1895 (8 of 1895), s. 7, Genl. Acts, Vol. IV.

Read now the Code of Criminal Procedure, 1898 (Act 5 of 1898), *see* Genl. Acts, Vol. V.

[3] This section was substituted by the Police Act (1861) Amendment Act, 1895 (8 of 1895), s. 8, Genl. Acts, Vol. IV. That section ran as follows :—

" If no person shall within the period allowed claim such property, it may be sold under the orders of the Magistrate of the district, and the proceeds shall be at the disposal of Government."

[4] These words were added by the Police Act (1861) Amendment Act, 1895 (8 of 1895), s. 9, Genl. Acts, Vol. IV.

leave, shall fail, without reasonable cause, to report himself for duty on the expiration of such leave,] or who shall engage without authority in any employment other than his police-duty, or who shall be guilty of cowardice, or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour, for a period not exceeding three months, or to both.

Regulation of public assemblies and processions and licensing of same.

[1] **30.** (*1*) That District Superintendent or Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads, or in the public streets or thoroughfares, and prescribe the routes by which, and the times at which, such processions may pass.

(*2*) He may also, on being satisfied that it is intended by any persons or class of persons to convene or collect an assembly in any such road, street or thoroughfare, or to form a procession which would, in the judgment of the Magistrate of the District, or of the sub-division of a district, if uncontrolled, be likely to cause a breach of the peace, require by general or special notice that the persons convening or collecting such assembly or directing or promoting such procession shall apply for a license.

(*3*) On such application being made, he may issue a license specifying the names of the licensees and defining the conditions on which alone such assembly or such procession is to be permitted to take place and otherwise giving effect to this section: Provided that no fee shall be charged on the application for, or grant of, any such license.

Music in the streets.

(*4*) He may also regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies.

Powers with regard to assemblies and processions violating conditions of license.

[2] **30A.** (*1*) Any Magistrate or District Superintendent of Police or Assistant District Superintendent of Police or Inspector of Police or any police-officer in charge of a station may stop any procession which violates the conditions of a license granted under the last foregoing section, and may order it or any assembly which violates any such conditions as aforesaid to disperse.

(*2*) Any procession or assembly which neglects or refuses to obey any order given under the last preceding sub-section shall be deemed to be an unlawful assembly.

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[1] This section was substituted by the Police Act (1861) Amendment Act, 1895 (8 of 1895), s. 10. That section ran as follows :—

"The District Superintendent and Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads or in the public streets or thoroughfares, and prescribe the route by which, and the times at which, such processions may pass.

They may also regulate the use of music in the streets on the occasion of festivals and ceremonies."

[2] S. 30A was inserted by the Police Act (1861) Amendment Act, 1895 (8 of 1895), s. 11, Genl. Acts, Vol. IV.

Police to keep order in public roads, etc.

31. It shall be the duty of the police to keep order on the public roads, and in the public streets, thoroughfares, ghâts and landing-places, and at all other places of public resort, and to prevent obstructions on the occasions of assemblies and processions on the public roads and in the public streets, or in the neighbourhood of places of worship, during the time of public worship, and in any case when any road, street, thoroughfare, ghât or landing-place may be thronged or may be liable to be obstructed.

Penalty for disobeying orders issued under last three sections, etc.

32. Every person opposing or not obeying the orders issued under the last [1][three] preceding sections, or violating the conditions of any license granted by the District Superintendent or Assistant District Superintendent of Police for the use of music, or for the conduct of assemblies and processions, shall be liable, on conviction before a Magistrate, to a fine not exceeding two hundred rupees.

Saving of control of Magistrate of district.

33. Nothing in the last [2][four] preceding sections shall be deemed to interfere with the general control of the Magistrate of the district over the matters referred to therein.

Punishment for certain offences on roads, etc.

34. Any person who, on any road or in any [3][open place or] street or thoroughfare within the limits of any [4] town to which this section shall be specially [5] extended by the Local Government, commits any of the following offences, to the obstruction, inconvenience, annoyance, risk, danger or damage of the [6][residents or passengers] shall, on conviction before a Magistrate, be liable to a [7] fine not exceeding fifty

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[1] "Three" was substituted for "two" by the Police Act (1861) Amendment Act, 1895 (8 of 1895), s. 12, Genl. Acts, Vol. IV.

[2] "Four" was substituted for "three" by the Police Act (1861) Amendment Act, 1895 (8 of 1895), s. 12, Genl. Acts, Vol. IV.

[3] These words were inserted by the Police Act (1861) Amendment Act, 1895 (8 of 1895), s. 10.

[4] "Town" here includes a cantonment, *see* the Cantonments Act, 1889 (13 of 1899), s. 12 (*2*), Genl. Acts, Vol. IV.

[5] For list of the towns to which this section has been specially extended in—

(1) Ajmer-Merwara, *see* Aj. R. & O.
(2) Assam, *see* Assam R. & O. and Supplement.
(3) Bengal (including Eastern Bengal), *see* Ben. Stat. R. & O., Vol. I.
(4) Burma, *see* Bur. R. M.
(5) Central Provinces, *see* the Cent. Provs. R. & O.
(6) Coorg, *see* Coorg R. & O.
(7) Punjab, *see* Punj. R. & O.
(8) United Provinces of Agra and Oudh, *see* U. P. R. & O., Vol. I, Pt. I.

In the Presidencies of Madras and Bombay there are separate Acts—*see* note to s. 46.

[6] These words were substituted for the words "residents and passengers" by the Police Act (1861) Amendment Act, 1895 (8 of 1895), s. 13, Genl. Acts, Vol. IV.

[7] As to disposal of such fines in Municipalities in—

(1) Central Provinces, *see* s. 49 of the Central Provinces Municipal Act, 1903 (16 of 1903), Cent. Prov. Code.
(2) Coorg, *see* s. 48 of the Coorg Municipal Regulation, 1907 (2 of 1907), Coorg Code.
(3) Punjab, *see* s. 71 (*b*) of the Punjab Municipalities Act, 1891 (20 of 1891), Punj. & N.-W. Code;
(4) United Provinces, *see* s. 52 of the N.-W. P. & Oudh Municipalities Act, 1900 (U. P. Act I of 1900), U. P. Code, Vol. II.

rupees, or to imprisonment [1][with or without hard labour] not exceeding eight days; and it shall be lawful for any police-officer to take into custody, without a warrant, any person who within his view commits any of such offences, namely:— Power of police-officers.

First.—Any person who slaughters any cattle or cleans any carcass; any person who rides or drives any cattle recklessly or furiously, or trains or breaks any horse or other cattle: Slaughtering cattle, furious riding, etc.

Second.—Any person who wantonly or cruelly beats, abuses or tortures any animal: Cruelty to animals.

Third.—Any person who keeps any cattle or conveyance of any kind standing longer than is required for loading or unloading or for taking up or setting down passengers, or who leaves any conveyance in such a manner as to cause inconvenience or danger to the public: Obstructing passengers.

Fourth.—Any person who exposes any goods for sale: Exposing goods for sale.

Fifth.—Any person who throws or lays down any dirt, filth, rubbish or any stones or building materials; or who constructs any cowshed, stable or the like, or who causes any offensive matter to run from any house, factory, dung-heap or the like: Throwing dirt into street.

Sixth.—Any person who is found drunk or riotous or who is incapable of taking care of himself: Being found drunk or riotous.

Seventh.—Any person who wilfully and indecently exposes his person, or any offensive deformity or disease, or commits nuisance by easing himself, or by bathing or washing in any tank or reservoir not being a place set apart for that purpose: Indecent exposure of person.

Eighth.—Any person who neglects to fence in or duly to protect any well, tank or other dangerous place or structure. Neglect to protect dangerous places.

35. [2] * * * * * * Any charge against a police-officer above the rank of a constable under this Act shall be enquired into and determined only by an officer exercising the powers of a [3] Magistrate. Jurisdiction.

36. Nothing contained in this Act shall be construed to prevent any person from being prosecuted under any other Regulation or Act for any offence made punishable by this Act, or from being liable under any other Regulation or Act or any other or higher penalty or punishment than is provided for such offence by this Act: Power to prosecute under other law not affected.

Provided that no person shall be punished twice for the same offence. Proviso.

[4] **37.** The provisions of sections 64 to 70, both inclusive, of the Recovery of

[1] These words were inserted by the Repealing and Amending Act, 1903 (1 of 1903), s. 3, second schedule, Genl. Acts, Vol. V.

[2] The words "In all cases of convictions under this Act the Officer trying the case shall be limited to his ordinary jurisdiction as to the amount of fine or imprisonment which he may inflict: Provided that," were repealed by the Code of Criminal Procedure, 1882 (Act 10 of 1882).

[3] *i.e.*, by a Magistrate of the first class, *see* s. 3 (2) of the Code of Criminal Procedure, 1898 (5 of 1898), Genl. Acts, Vol. V.

[4] Section 37 was substituted for ss. 37, 38, 39 and 40 by the Police Act (1861) Amendment Act, 1895 (8 of 1895), s. 14, Genl. Acts, Vol. IV.

Penalties and fines imposed by Magistrates.

[1] Indian Penal Code, and of sections 386 to 389, both inclusive, of the [2] Code of Criminal Procedure, 1882, with respect to fines, shall apply to penalties and fines imposed under this Act on conviction before a Magistrate: XLV of 1860 X of 1882.

Provided that, notwithstanding anything contained in section 65 of the first mentioned Code, any person sentenced to fine under section 34 of this Act may be imprisoned in default of payment of such fine for any period not exceeding eight days.

38. [*Procedure until return is made to warrant of distress.*] *Rep.—see the Police Act (1861) Amendment Act, 1895 (VIII of 1895), s. 14.*

39. [*Imprisonment if distress not sufficient.*] *Rep.—see the Police Act (1861) Amendment Act, 1895 (VIII of 1895), s. 14.*

40. [*Levy of fines from European British subjects.*] *Rep.—see the Police Act (1861) Amendment Act, 1895 (VIII of 1895), s. 14.*

Rewards to police and informers payable to General Police Fund.

41. All sums paid for the service of process by police-officers, and all rewards, forfeitures and penalties or shares of rewards, forfeitures and penalties, which by law are payable to informers shall, when the information is laid by a police-officer, be paid into the [3]General Police Fund.

Limitation of actions.

42. [4] *All actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the general police-powers hereby given shall be commenced within three months after the act complained of shall have been committed, and not otherwise;* and notice in writing of such action and of the cause thereof shall be given to the defendant, or to the District Superintendent or an Assistant District Superintendent of the district in which the act was committed, one month at least before the commencement of the action.

Tender of amends.

No plaintiff shall recover in any such action if tender of sufficient amend shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant, and, though a decree shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial is held shall certify his approbation of the action.

Proviso.

Provided always that no action shall in any case lie where such officers shall have been prosecuted criminally for the same act.

Plea that act

43. [5]When any action of prosecution shall be brought or any pro-

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[1] *Supra.*

[2] Read now Code of Criminal Procedure, 1898 (Act 5 of 1898), Genl. Acts, Vol. V.

[3] *See* as to this fund, s. 16, *supra.*

[4] So much of s. 42 as relates to the limitation of suits was repealed by the Indian Limitation Act, 1871 (9 of 1871).

[5] A commandant or second-in-command of Military Police in Burma is entitled to the privileges which a police-officer has under ss. 42 and 43, *see* the Burma Military Police Act, 1887 (15 of 1887), s. 13, Bur. Code.

ceedings held against any police-officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate. was done under warrant.

Such plea shall be proved by the production of the warrant directing the act, and purporting to be signed by such Magistrate and the defendant shall thereupon be entitled to a decree in his favour, notwithstanding any defect of jurisdiction in such Magistrate. No proof of the signature of such Magistrate shall be necessary, unless the Court shall see reason to doubt its being genuine:

Provided always that any remedy which the party may have against the authority issuing such warrant shall not be affected by anything contained in this section. Proviso.

44. It shall be the duty of every officer in charge of a police-station to keep a general diary in such form as shall, from time to time, be prescribed by the Local Government, and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined. Police-officers to keep diary.

The Magistrate of the district shall be at liberty to call for and inspect such diary.

45. The Local Government may direct the submission of such returns by the Inspector-General and other police-officers as to such Local Government shall seem proper, and may prescribe the form in which such returns shall be made. Local Government may prescribe form of returns.

[1]**46.** (*1*) This Act shall not by its own operation take effect in any [2] presidency, province or place. But the Governor General in Council, by an order to be published in the Gazette of India, may extend the whole or any part of this Act to any presidency, province or place, and the whole or such portion of this Act as shall be specified in such order shall thereupon take effect in such presidency, province or place. Scope of Act.

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[1] This section was substituted by the Police Act (1861) Amendment Act, 1895 (8 of 1895), s. 15, Genl. Acts, Vol. IV. The original section ran as follows :—

" 46. This Act shall not take effect in any presidency, province or place unless the same shall be extended to such presidency, province or place by the Governor General of India in Council by an order to be published in the Government Gazette.

" When the Act shall have been so extended, it shall be carried into effect in such presidency, province or place as the Local Government, by an order to be published in the official Gazette, shall direct."

[2] In the Madras and Bombay Presidencies, there are special Police Acts, *see* Act 24 of 1859 (Mad. Code, Vol. I), and Bombay Acts 7 of 1867 (Bom. Code, Vol. II), and 4 of 1890 (*ibid*, Vol. III); and in the Lower Provinces of Bengal, Bengal Act, 7 of 1869, is to be read and taken as part of Act 5 of 1861, *see* s. 6 of the former Act, Ben. Code, Vol. IV. But for the purposes of s. 2 of the Police Act, 1888 (3 of 1888), and notwithstanding s. 46 of this Act, the Act of 1861 shall be deemed to take effect throughout British India, *see* s. 2 (*6*) of Act 3 of 1888, Genl. Acts, Vol. IV.

For notifications extending this Act under the power conferred by the original section to—

(1) the United Provinces of Agra and Oudh, including Ajmer-Merwara then under that Government, *see* Notification No. 964 in the North-Western Provinces Gazette, 1861, p. 634 :

(2) When the whole or any part of this Act shall have been so extended, the Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

(*a*) to regulate the procedure to be followed by Magistrates and [1] police-officers in the discharge of any duty imposed upon them by or under this Act;

(*b*) to prescribe the time, manner and conditions within and under which claims for compensation under [2] section 15A are to be made, the particulars to be stated in such claims, the manner in which the same are to be verified, and the pro-

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[For orders as to enforcement of the Act in 27 districts in the United Provinces of Agra and Oudh, in Hamirpur, Jalaun, Jhansi, Lalitpur, Naini Tal (including the Tarai Pargans) and Almora and Garhwal issued under the original s. 46, paragraph 2 (after the Act had been extended under paragraph 1 of that section to the whole province), *see* Notifications noted in U. P. List of R. & O. These orders are kept in force by s. 16 of Act 8 of 1895, Genl. Acts, Vol. IV.]

(2) Oudh, *see* Notification No. 34 in the North-Western Provinces Gazette, 1861, p. 1758;

(3) tract of land between Allahabad and Jubbulpore ceded in full sovereignty by certain Native States, *see* Notification No. 205-F., at page 13 of the Cent. P. R. & O.;

(4) Districts in Burma—

(*a*) Pegu [now the "Pegu and Irrawaddy Divisions," *see* Burma Gazette, 1881, Pt. II, p. 98, Notification No. 946], *see* Notification No. 1453, Burma Gazette, 1861, Pt. I, p. 2340;

(*b*) Tenasserim } *See* Notification No. 1906, Burma Gazette, 1861, Pt. I,
Martaban } p. 3189;

(*c*) Arakan, *see* Notification No. 571, Burma Gazette, 1864, Pt. I, p. 45;

(5) the Central Provinces, the Districts of Nagpur, Raipur, Bhandara, Chanda and Chhindwara, Sironcha, Nimar, *see* Cent. P. R. & O.;

(6) Bengal and Assam, that is, the Provinces comprised in the Lieutenant Governorship of Bengal, of which the various districts now forming the Lieutenant-Governorship of Eastern Bengal and Assam then formed part, *see* Notification No. 1871, set out at p. 3 of the Assam R. & O.; Sambalpur district which now forms part of Bengal (Genl. Stat. R. & O., Vol. I, p. 78), see Cent. Provs. R. & O., p. 14;

(7) several districts in the Punjab, *see* Notification No. 971, dated 15th May, 1861, Calcutta Gazette, 18th May, 1861, p. 1302, and Punjab R. & O.

Under the power conferred by the section as it now stands it has been extended as follows to—

(1) Upper Burma (except the Shan States), *see* Notification No. 619, Burma Gazette, 1895, Pt. II, p. 265.

(2) Madras, ss. 15, 15A, 16, 30, 30A, 31 and 32 of the Act have been extended to the whole of the Madras Presidency, *see* Notification No. 728, dated 31st October, 1895, Gazette of India, 1895, Pt. I, p. 876.

(3) Eastern Dooars in the Goalpara District, *see* Notification No. 230, Gazette of India, 1897, Pt. I, p. 198.

(4) the North and South Lushai Hills and the tract known as Rutton Puiya's villages including Demagri (now known as the Lushai Hills), *see* Gazette of India, 1898, Pt. I, p. 370.

For list of Pro inces and districts to which the Act has been extended by special enactments, *see* note (1) on p. 377 *supra*.

[1] For rules as to the guidance of the police on the several railways in Bengal in the matter of arrest and prosecution under ss. 101 and 131 of the Railways Act, 1890 (9 of 1890), *see* Calcutta Gazette, 1904, Pt. I, p. 884.

[2] For rules regulating proceedings in Burma under s. 15A, *see* Notification No. 266, Burma Gazette, 1895, Pt. I, p. 448.

ceedings (including local enquiries if necessary) which are to be taken consequent thereon; and,

(*c*) generally, for giving effect to the provisions of this Act.

(*3*) All rules made under this Act may from time to time be amended, added to or cancelled by the Local Government.

Authority of District Superintendent of Police over village-police.

47. It shall be lawful for the Local Government, in carrying this Act into effect in any part of the territories subject to such Local Government, to [1] declare that any authority which now is or may be exercised by the Magistrate of the district over any village-watchman or other village-police-officer for the purposes of police, shall be exercised, subject to the general control of the Magistrate of the district, by the District Superintendent of Police.

FORM.

(*See section 8.*)

A.B. has been appointed a member of the police-force under Act V of 1861, and is vested with the powers, functions and privileges of a police-officer.

[1] For powers conferred under this section in—

(1) Assam in the districts of Kamrup, Darrang, Sibsagar, Khasi and Jaintia Hills, Nowgong, Goalpara, Lakhimpur, *see* Bengal Government Notification No. 1862, on p. 6 of the Assam R. & O.

(2) Bengal (including Eastern Bengal), *see* Ben. R. & O., Vol. I.

(3) Central Provinces, *see* Cent. Provs. R. & O.

ACT No. XVI OF 1861[1].

[*7th July, 1861.*]

An Act for licensing and regulating Stage-Carriages.

Preamble.

WHEREAS it is expedient to license and to regulate stage-carriages in British India; It is enacted as follows:—

Definition of stage-carriage.

1. Every carriage drawn by one or more [2] horses which shall ordinarily be used for the purpose of conveying passengers for hire to or from any place in British India shall, without regard to the form or construction of such carriage, be deemed to be a stage-carriage within the meaning of this Act: [3] * * * * * * * * * * * * * *

Carriages to be licensed.

2. No carriage shall be used as a stage-carriage unless licensed by a [4] Magistrate or by the Chief Commissioner of Police of a Presidency-town.[5]

Power to refuse license.

3. The Magistrate or Chief Commissioner of Police to whom the application for a license of a stage-carriage is made may refuse to license the same if he shall be of opinion that such stage-carriage is unserviceable or is unsafe or unfit for public accommodation or use.

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[1] Short title, "The Stage-Carriages Act, 1861." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

Cf. "The Stage-Carriages Act, 1832" (2 & 3 Wm. IV, c. 120); "The London Hackney Carriages Act, 1833" (3 & 4 Wm. IV, c. 48); "The Railway Passenger Duty Act, 1842" (5 & 6 Vict., c. 79); "The Railway Passenger Duty Act, 1847" (10 & 11 Vict., c. 42); "The Excise Act, 1848" (11 & 12 Vict., c. 118), s. 2.

Act 16 of 1861 (as amended by the Stage-Carriages Act (1861) Amendment Act, 1898 (1 of 1898), Genl. Acts, Vol. V, has been declared to apply to the whole of British India, but not so as to supersede or contravene provisions of local laws dealing with the same subject—*see infra*, s. 22. For local laws, *see* Bombay Act 6 of 1863, Bom. Code, Vol. II; the Madras Hackney Carriage Act, 1879 (Mad. Act 3 of 1879), Madras Code; and the Calcutta Hackney Carriage Act, 1891 (Ben. Act 2 of 1891), Ben. Code, Vol. II. *Cf.* also the Hackney Carriage Act, 1879 (14 of 1879), U. P. Code, Vol. I.

It has been declared, by notification under s 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely:—

The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44) and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum	*See* Gazette of India, 1881, Pt. I, p. 504.
The Tarái of the Province of Agra	Ditto 1876, Pt. I, p. 505.

It has been declared, by notification under s. 3 (*a*) of the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), to be in force in the Santhál Parganas, *see* Calcutta Gazette, 1901, Pt. I, p. 301.

[2] All expressions and provisions in this Act applied to horses, also apply to all other animals employed in drawing stage-carriages, *see* section 21, *infra*.

[3] The proviso to s. 1 was repealed by s. 2 of the Stage-Carriages Act (1861) Amendment Act, 1898 (1 of 1898), s. 2, Genl. Acts, Vol. V. That proviso ran as follows:—

"Provided that this Act shall not apply to carriages not ordinarily used for journeys of a greater distance than twenty miles."

[4] For definition of "Magistrate," *see* s. 21, *infra*.

[5] For notification authorizing Deputy Commissioners in the Punjab to grant licenses—*see* Punjab Loc. R. & O.

If a Magistrate or Chief Commissioner of Police as aforesaid shall grant a license, the license shall set forth the number thereof, the name and residence of the proprietor of the stage-carriage, the place at which his head office is held, the largest number of passengers and the greatest weight of luggage to be carried in or on such carriage, the number of horses by which such carriage is to be drawn, and the name of the place at which such carriage is licensed. Particulars of license.

4. [1][For every such license there shall be paid by the proprietor of the stage-carriage the sum of five rupees for such less sum as the Local Government may [2] fix, and such license shall be in force for one year from the date thereof.] Charge for and duration of license.

When a licensed stage-carriage is transferred to a new proprietor within the year, the name of such new proprietor shall, on application to that effect, be substituted in the license for the name of the former proprietor without any further payment for that year; and every person who appears by the license to be the proprietor shall be deemed to be such proprietor for all the purposes of this Act.

5. On any stage-carriage being licensed the proprietor thereof shall cause the number of the license and all the other particulars of the license to be distinctly painted in the English language and character upon a conspicuous part of such stage-carriage. Particulars to be painted on conspicuous part of carriage.

6. The proprietor of any licensed stage-carriage who shall let such stage-carriage for hire without the particulars specified in section 3 being painted on such carriage in the manner directed in the last preceding section shall be liable to a fine not exceeding one hundred rupees. Penalty for letting carriage without having particulars painted.

7. Whoever lets for hire any stage-carriage without the same being licensed as provided by this Act, shall be liable, on a first conviction, to a fine not exceeding one hundred rupees, and on any subsequent conviction, to a fine which may extend to five hundred rupees. Penalty for letting for hire unlicensed carriage.

8. Any proprietor, or agent of a proprietor, or any driver of a licensed stage-carriage, who knowingly permits such carriage to be drawn by a less number of horses, or who knowingly permits a larger number of passengers, or a greater weight of luggage, to be carried by such stage-carriage than shall be provided by the license, shall be liable on a first conviction to a fine not exceeding one hundred rupees, and on any subsequent conviction, to a fine which may extend to five hundred rupees. Penalty for allowing carriage to be drawn by fewer animals or more passengers, etc., to be carried than provided by license.

In every case where such stage-carriage shall be proved to have been drawn by a less number of horses, or to have carried a larger number of passengers or a greater weight of luggage, than shall be provided by

[1] This paragraph was substituted by the Stage-Carriages Act (1861) Amendment Act, 1898 (1 of 1898), s. 3, Genl. Acts, Vol. V. That paragraph was identical with the paragraph as it now stands, save that it did not contain the words " or such less sum as the Local Government may fix," after the word " rupees."

[2] For scale of fees fixed by the Chief Commissioner, N.-W. Frontier Province, *see* Gazette of India, 1904, Pt. II, p. 534.

the license, the proprietor of such carriage shall be held to have knowingly permitted such offence, unless he shall prove that the offence was not committed with his connivance, and that he had taken every reasonable precaution and had made reasonable provision to prevent the commission of the offence.

Penalty for ill-treating animals.

9. Any person who shall cruelly beat, ill-treat, over-drive, abuse, torture or cause or procure to be cruelly beaten, ill-treated, over-driven, abused or tortured, any horse employed in drawing or harnessed to any stage-carriage, or who shall harness to or drive in any stage-carriage any horse which from sickness, age, wounds or other cause is unfit to be driven in such stage-carriage, shall for every such offence be liable to a fine not exceeding one hundred rupees.

Revocation of license.

10. Any Magistrate or Chief Commissioner of Police within the local limits of whose jurisdiction any stage-carriage shall ply, or who has granted the license of any stage-carriage may cancel the license of such stage-carriage if it shall appear to him that such stage-carriage or any horse or any harness used with such carriage is unserviceable or unsafe or otherwise unfit for public accommodation or use.

Penalty for not conforming to provisions of section 5.

11. In any station or place in which a Magistrate shall reside and be, any police-officer may, in any place within two miles of the office of such Magistrate, seize any stage-carriage with the horse harnessed thereto, if the full particulars of the license of such stage-carriage be not distinctly painted on such stage-carriage in the manner provided in section 5 of this Act.

Such carriage with the horse harnessed thereto shall be taken without delay by such police-officer before such Magistrate, who shall forthwith proceed to hear and determine the complaint of such police-officer; and, if thereupon any fine is imposed by such Magistrate and such fine is paid, such stage-carriage and horse shall be immediately released; and if such fine be not paid, such stage-carriage and horse may be detained for twenty days as security for the payment thereof; and if the fine be not sooner paid, they may be sold and the proceeds applied (so far as they extend) to the payment of the said fine, and all costs and charges incurred on account of the detention and sale; and the surplus (if any), when claimed, shall be paid to the proprietor of such carriage and horse; and if such surplus be not claimed within a further period of two months from such sale, the same shall be forfeited to the State.

If the proceeds of such sale do not fully pay the fine and costs and charges aforesaid, the balance may be recovered as hereinafter provided.

Penalty for misconduct on part of drivers.

12. If any driver of any stage-carriage, or any other person having the care thereof, shall through intoxication, neglect or by wanton or furious driving, or by any other misconduct, endanger the safety of any passenger or other person, or shall injure or endanger the property

of the proprietor of such stage-carriage or of any other person, every such person so offending shall be liable to a fine not exceeding one hundred rupees.

Penalty when recoverable from proprietor.

13. Whenever the driver of any stage-carriage or the owner of any horse employed in drawing any stage-carriage shall have committed any offence against this Act for the commission whereof any penalty is by this Act imposed, other than an offence specified in section 8, and such driver or owner shall not be known, or being known cannot be found, or if the penalty cannot be recovered from such driver or owner, the proprietor of such carriage shall be liable to every such penalty as if he had been the driver of such carriage or owner of such horse at the time when such offence was committed:

Proviso.

Provided that if any such proprietor shall make out, to the satisfaction of the Magistrate before whom any complaint or information shall be heard, by sufficient evidence, that the offence was committed by such driver or owner without the privity or knowledge of such proprietor, and that no profit, advantage or benefit, either directly or indirectly, has accrued or can accrue to such proprietor therefrom, and that he has used his endeavour to find out such driver or owner, and has done all that was in his power to recover the amount of the penalty from him, the Magistrate may discharge the proprietor from such penalty, and shall levy the same upon such driver or owner when found.

Issue of summons.

14. Whenever any charge is made before any Magistrate of any offence under this Act on which it is necessary to issue a summons to the proprietor of a stage-carriage, the Magistrate shall issue such summons directed to such proprietor or his nearest agent, and may transmit such summons by letter-post, which shall be deemed to be good service thereof.

The letter shall be registered at the post-office, and the cost of the registration shall be borne by the Government in the first instance, but may be charged as costs in the case.

The summons shall allow a reasonable time, in reference to the distance to which the summons is sent, for the appearance of such proprietor or his agent as aforesaid.

Adjudication of penalties.

15. All penalties incurred under this Act shall be adjudged by a Magistrate or Chief Commissioner of Police as aforesaid, and all orders made under this Act by such Magistrate or Chief Commisioner of Police shall be final.

Recovery of penalties, etc.

16. All penalties imposed under this Act, or any balance of any fine, costs or charges as mentioned in section 11 of this Act, may in case of non-payment or non-recovery thereof be levied by distress and sale of the moveable property of the offender by warrant under the hand of the Magistrate who imposed the same.

Offender may be apprehended and detain-

17. In case any such penalties shall not be forthwith paid, such Magistrate may order the offender to be apprehended and detained in

ed in custody until return of warrant of distress.

safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such Magistrate for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

Imprisonment of offender if distress not sufficient.

18. If upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such penalty, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such Magistrate by the confession of the offender or otherwise that he has not sufficient goods and chattels whereupon such penalty could be levied if warrant of distress were issued, such Magistrate may, by warrant under his hand, commit the offender, provided he is not a European British subject, to prison, there to be imprisoned, according to the discretion of such officer, for any term not exceeding two calendar months when the amount of penalty shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount.

Recovery of penalty and cost from European British subjects.

19. If the offender shall be a European British subject, the Magistrate shall record the facts and transmit such record to the District Court of the district wherein the offender is convicted, and the amount of penalty and the costs (if any) shall be levied in the manner provided for the execution of decrees of the Civil Court.

Jurisdiction.

20. On complaint made before any Magistrate of any offence committed under this Act, it shall not be necessary to prove that the offence was committed within the local limits of such Magistrate or other officer.

Power to make rules.

[1] **20A.** (*1*) The Local Government may, by notification in the official Gazette, make [2] rules to carry out the purposes and objects of this Act in the territories under its administration or any part of the said territories.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) prescribe forms for licenses under this Act, the [3] sums payable for the same and the conditions on which they may be granted, and the cases in which they may be revoked;

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[1] Section (20A) was inserted by the Stage-Carriages Act (1861) Amendment Act, 1898 (1 of 1898), s. 4, Genl. Acts, Vol. V.

[2] For rules under section 20A for—
(1) Ajmer-Merwara, *see* Aj. R. & O.
(2) Bengal, *see* Beng. Stat. R. & O., Vol. II.
(3) Bombay, *see* Bom. R. & O., Vol. I.
(4) Madras, *see* Mad. R. & O., Vol. I.
(5) Punjab, *see* Punj. Government Gazette, 1907, Pt. I, p. 299.

[3] For notification prescribing fees in respect of certain carriages in the Punjab, *see* Punjab Gazette, 1904, Pt. I, p. 81, and *ibid*, 1907, Pt. I, p. 300.

(*b*) provide for the inspection of stage-carriages, and of the animals employed in drawing them; and

(*c*) regulate the number and length of the stages for which animals may be driven in stage-carriages and the manner in which they shall be harnessed and yoked.

(*3*) In making any rule under this section, the Local Government may direct that a breach thereof shall be punishable with fine which may extend to one hundred rupees.

Interpretation-clause. "Magistrate." "British India."

21. The term "Magistrate" in this Act shall include all Magistrates and other persons exercising the powers of a [1] Magistrate:

The term "British India" in this Act shall denote the territories that are or shall be vested in Her Majesty by the [2] Statute 21 & 22 Vict., c., 106, entitled "An Act for the better government of India:" 21 & 22 Vict, c. 106.

Act applicable to all animals used for drawing carriages.

[3][All expressions and provisions which in this Act are applied to horses shall also apply to all other animals employed in drawing any [4] carriage ordinarily used for the purpose of conveying passengers for hire to or from any place in British India:]

Number.

[5] Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number:

Gender.

Words importing the masculine gender shall include the feminine.

Extent of Act.

22.[6] This Act, as amended by subsequent Acts, extends to the whole of British India; but it shall not apply to carriages ordinarily plying for hire within the limits of any municipality or cantonment or other place in which any law for the regulation of carriages is for the time being in force.

Power to Local Government to exempt.

23[6]. The Local Government may, by notification in the official Gazette, [7] exempt any carriages or class of carriages from all or any of the provisions of this Act.

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[1] As to officers exercising the powers of a Magistrate, *see* s. 3 (*2*) of the Code of Criminal Procedure, 1898 (Act 5 of 1898), Genl. Acts, Vol. V.

[2] For "The Government of India Act, 1858" (21 & 22 Vict., c. 106), *see* Coll. Stat. Ind., Vol. I, p. 300, Ed. 1899; *cf.* definition of "British India," in the General Clause Act, 1897 (10 of 1897), s. 3 (*7*), Genl. Acts, Vol. IV.

[3] This paragraph was substituted by the Stage-Carriages Act (1861) Amendment Act, 1876 (16 of 1876), s. 1, Genl. Acts, Vol. II. The original paragraph rans as follows:—

"The term 'horse' shall include ponies and mules."

[4] That is, a "stage-carriage." *See* s. 1 *supra*.

[5] *Cf.* s. 3 of the General Clauses Act, 1897 (10 of 1897), Genl. Acts, Vol. IV.

[6] Ss. 22 and 23 were added by the Stage-Carriages Act (1861) Amendment Act, 1898 (1 of 1898), s. 5, Genl. Acts, Vol. V. The original s. 22 regarding the commencement of this Act as originally passed was repealed by the Repealing Act, 1870 (14 of 1870).

[7] For notification exempting (*1*) tongas on the Kalka-Simla Road from all the provisions of the Act, *see* Punjab Government Gazette, 1904, Pt. I, p. 80; (*2*) all vehicles engaged by the Railway authorities for passengers from Khusalgar West to Khusalgar East, *see* Gazette of India, 1904, Pt. II, p. 534.

ACT No. III OF 1862[1].

[*28th February, 1862.*]

An Act to amend the law relating to the use of a Government Seal.

Preamble.

WHEREAS it is expedient to adapt the law relating to the use of a Government seal to the present form of the Government in India; It is enacted as follows:—

Seal to be used instead of seal of East India Company.

Whenever it is required by any Regulation of a Local Government, or by any Act of the Governor General of India in Council, that the seal of the East India Company shall be affixed on behalf or by the authority of the Government to any instrument or document, it shall be lawful, if the seal is to be affixed on behalf or by the authority of a Local Government, to affix in lieu of the seal of the East India Company a

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[1] Short title, "The Government Seal Act, 1862." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

For Statement of Objects and Reasons of the Bill which became Act III of 1862, *see* Calcutta Gazette, 1862, p. 466. For Proceedings in Council relating to the Bill, *see ibid*, Supplement, pp. 28 and 71.

The Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has been declared, by notification under s 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

West Jalpaiguri and the Western Dvárs, *see* Gazette of India, 1881, Pt. I, p. 74.

The Districts of Hazáribagh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1889, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504.

The Scheduled Districts in Ganjam and Vizagapatam, *see* Gazette of India, 1898, Pt. I, p. 870.

The Scheduled portion of the Mirzápur District, *see* Gazette of India, 1879, Pt. I, p. 383.

Jaunsar Báwar, *see* Gazette of India, 1879, Pt. I, p. 382.

The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán, Dera Gházi Khán and the Districts of Kohát and Pesháwar now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575*); [*but its application has been barred to that portion of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punjab and N.-W. Code*]. *See* Gazette of India, 1886, Pt. I, p. 48.

The District of Sylhet, *see* Gazette of India, 1879, Pt. I, p. 631.

The rest of Assam (except the North Lushái Hills), *see* Gazette of India, 1897, Pt. I, p. 299.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the Scheduled Districts of Kumaon and Garhwál. *See* Gazette of India, 1876, Pt. I, p. 606.

It has been declared, by notification under s. 3 (*b*) of the same Act, not to be in force in the Scheduled District of Lahaul. *See* Gazette of India, 1886, Pt. I, p. 306.

seal bearing the designation of such Local Government, or, if the seal is to be affixed on behalf or by the authority of the Government of India, a seal bearing the inscription "Government of India"; and such instrument or document so sealed shall to all intents and purposes be as valid and effectual as if the seal so used had been that of the East India Company.[1]

ACT No. XVI OF 1863[2].

[*10th March, 1863.*]

An Act to make special provision for the levy of the Excise-

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[1] Legislation on this subject was originally suggested in order to meet a difficulty respecting the seal to be used under Act 19 of 1838 (*for the registration of coasting-vessels in the Bombay Presidency*). Section 8 of that Act requires that certificates of registry 'shall be sealed with the seal of the East India Company,' and the Government of Bombay were advised by their law officers that no other seal could properly be used for such certificates until some Act should be passed 'prescribing the seal to be used in lieu of the seal of the East India Company.'

[2] Short title, "The Excise (Spirits) Act, 1863." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

For Statement of Objects and Reasons of the Bill which became Act 16 of 1863, *see* Calcutta Gazette, 1862, p. 4063 and for Proceedings in Council relating to the Bill *see ibid.* Supplement, p. 449; and *ibid*, 1863, p. 106.

The Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), Bur. Code; in the Santhál Parganas by the Santhál Parganas Settlement Regulation, 1872 (3 of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), Ben. Code, Vol. I, and in the Angul District by the Angul District Regulation, 1894 (1 of 1894), *ibid.*

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely :—

Sindh, *see* Gazette of India, 1880, Pt. I, p. 672.

Aden, *see* Gazette of India, 1879, Pt. I, p. 434.

West Jalpáiguri and the Western Dvárs, *see* Gazette of India, 1881, Pt. I, p. 74.

The Districts of Hazáribagh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504.

The Scheduled Districts in Ganjam and Vizagapatam, *see* Gazette of India, 1898, Pt. I, p. 870.

The Tarái of the Province of Agra, *see* Gazette of India, 1876, Pt. I, p. 505.

The Scheduled portion of the Mirzápur District, *see* Gazette of India, 1879, Pt. I, p. 383.

Jaunsar Báwar, *see* Gazette of India, 1879, Pt. I, p. 382.

The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán, Dera Gházi Khán and the Districts of Kohát and Pesháwar now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575*); [*but its application has been barred to that portion of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punjab and N.-W. Code*]. *See* Gazette of India, 1886, Pt. I, p. 46.

duty payable on Spirits used exclusively in Arts and Manufactures or in Chemistry.

Preamble.

WHEREAS it is expedient to make special provision for the levy of the excise-duty payable on spirits used exclusively in arts and manufactures or in chemistry; It is enacted as follows:—

Duty payable on removal of such spirits from distillery.

1. Spirits intended to be used exclusively in arts and manufactures or in chemistry may be removed from any licensed distillery in any part of British India on payment of duty [1][not exceeding five] per cent. on the value of the spirits:

Proviso.

Provided that no spirits shall be so removed until they have been effectually and permanently rendered unfit for human consumption.

Rules of ascertaining that spirits to be removed have been rendered unfit for human consumption, etc.

2. The Board of Revenue, or other authority specially authorized in that behalf by the Local Government, shall prescribe from time to time, subject to the approval of the Local Government, [2] rules—

for ascertaining and determining that spirits proposed to be removed for the purposes aforesaid have been effectually and permanently rendered unfit for human consumption, as required by section 1 of this Act;

for causing such spirits to be so rendered, if necessary, by its own officers at the expense of the person who wishes to remove them; and

for fixing the value of the spirit on which the *ad valorem* duty shall be levied.

Penalty for breach of such rules.

3. Every person who shall wilfully contravene any rule prescribed by the Board of Revenue, or other authority as aforesaid, under the last preceding section of this Act, shall be liable on conviction before any officer exercising the powers of a Magistrate to a penalty not exceeding five hundred rupees for every such offence.

Penalty for attempting to render fit

4. Every person who shall attempt, or shall connive at an attempt, to render fit for human consumption, spirits removed from a distillery

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The District of Sylhet, *see* Gazette of India, 1879, Pt. I, p. 631.
The rest of Assam (except the North Lushái Hills), *see* Gazette of India, 1897, Pt. I, p. 299.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the Scheduled Districts of Kumáon and Garhwál, *see* Gazette of India, 1876, Pt. I, p. 606.

It has been declared, by notification under s. 3 (*b*) of the same Act, not to be in force in the Scheduled District of Lahaul. *See* Gazette of India, 1886, Pt. I, p. 301.

[1] The words " not exceeding five " were substituted for the words " calculated at ten " by the Indian Tariff Act, 1894 (8 of 1894), s. 6, Genl. Acts, Vol. IV.

[2] For rules made under this section for—

(1) Bengal (denaturalized spirits), *see* Calcutta Gazette, 1909, Pt. I, p. 100.
(2) Burma, *see* Bur. R. M., Vol. I.
(3) Madras, *see* Madras R. & O., Vol. I, and Fort St. George Gazette, 1908, Pt. II, p. 387.

under the provisions of this Act, shall be liable to a penalty not exceeding one thousand rupees;

for human consumption spirits removed under Act.

and the possessor of such spirits on which such attempt has been made, or which may have been rendered fit for human consumption, shall be liable on conviction before any officer exercising the powers of a Magistrate, to a penalty not exceeding five hundred rupees.

Penalty how levied.

5. Any penalty imposed under either of the last two preceding sections may in case of non-payment be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand of the officer by whom such penalty was imposed.

In case of non-payment of penalty, offender may be detained pending return to distress warrant.

6. In case any such penalty shall not be forthwith paid, any such officer may order the offender to be apprehended and detained in safe custody, until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

Imprisonment of offender in case of failure to recover penalty by distress.

7. If upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such penalty, and the same shall not be forthwith paid, or

in case it shall appear to the satisfaction of such officer by the confession of the offender or otherwise that he has not sufficient goods and chattels whereupon such penalty could be levied if a warrant of distress were issued,

any such officer may by warrant under his hand commit the offender to the civil jail, there to be imprisoned, according to the discretion of such officer, for any term not exceeding two calendar months when the amount of penalty shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount.

8. [*Provisions of section 11, Act III of 1852, relating to adulteration, not to apply to spirits rendered unfit for consumption under Act.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891), s. 2 (1).*

Confiscation in cases of conviction under section 3 or 4.

9. In every case of conviction under section 3 or section 4 of this Act, the liquor or spirits with the cask or vessel containing the same, and the cart, boat and animal or animals employed in carrying such liquor or spirit, shall be liable to confiscation.

ACT No. XX OF 1863 [1].

[*10th March, 1863.*]

An Act to enable the Government to divest itself of the management of Religious Endowments.

Preamble. WHEREAS it is expedient to relieve the Boards of Revenue, and the Local Agents, in the Presidency of Fort William in Bengal, and the Presidency of Fort Saint George, from the duties imposed on them by

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[1] Short title, "The Religious Endowments Act, 1863." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

For the Statement of Objects and Reasons of the Bill which became Act 20 of 1863, *see* Calcutta Gazette, 1862, p. 753, and for Proceedings in Council relating to the Bill, *see ibid*, Supplement, p. 28; and *ibid*, 1863, p. 105.

The Act has been extended to Kanara by Bombay Act 7 of 1865, which was specially passed for that purpose. *See* Bom. Code, Vol. II.

It has been declared, b ynotification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum	*See* Gazette of India,	1881, Pt. I, p .504.
The Scheduled portion of the Mirzápur District	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.
The Scheduled Districts in Ganjam and Vizagapatam	Ditto	1898, Pt. I, p. 870.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Peshawar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857 and* ibid, *1902, Pt. I, p. 575, but its application in that part of the Hazára District known as Upper Tanawal is barred by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punj. & N.-W. Code*)	Ditto	1886, Pt. I, p. 48.
Assam (except the North Lushái Hills)	Ditto	1897, Pt. I, p. 299.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

Kumáon and Garhwál	*See* Gazette of India,	1876, Pt. I, p. 606.
The Tarái of the Province of Agra	Ditto	1876, Pt. I, p. 505.
Ajmer and Merwára	Ditto	1877, Pt. I, p. 605.

S. 22 applies to the whole of British India.

Ben. Reg. XIX of 1810.

Mad. Reg. VII of 1817.

[1] Regulation XIX, 1810, of the Bengal Code (*for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples, Colleges and other purposes; for the maintenance and repair of Bridges, Sarais, Kattras and other public buildings; and for the custody and disposal of Nazul Property or Escheats*), and [2] Regulation VII, 1817, of the Madras Code (*for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples and Colleges or other public purposes; for the maintenance and repair of Bridges, Choultries, or Chattrams, and other public buildings; and for the custody and disposal of Escheats*), so far as those duties embrace the superintendence of lands granted for the support of mosques or Hindu temples and for other religious uses; the appropriation of endowments made for the maintenance of such religious establishments; the repair and preservation of buildings connected therewith, and the appointment of trustees or managers thereof; or involve any connexion with the management of such religious establishments; [3] * * * * * * *." It is enacted as follows:—

1. [*Repeal of parts of Bengal Regulation XIX of 1810 and Madras Regulation VII of 1817.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

2. In this Act—

Interpretation-clause. Number.

words importing the singular number shall include the plural, and words importing the plural number shall include the singular;

Gender.

words importing the [4] masculine gender shall include females;

"Civil Court" and "Court."

the words "Civil Court" and "Court" shall mean the principal Court of original civil jurisdiction in the district in which the mosque, temple or religious establishment is situate, relating to which, or to the endowment whereof, any suit shall be instituted or application made under the provisions of this Act.

Government to make special provision respecting mosques, etc.

3. In the case of every mosque, temple or other religious establishment to which the provisions of either of the Regulations specified in [5] [the preamble to this Act,] are applicable, and nomination of the trustee, manager or superintendent thereof, at the time of the passing of this Act, is vested in, or may be exercised by, the Government or any public officer, or in which the nomination of such trustee, manager or superintendent shall be subject to the confirmation of the Government

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[1] Ben. Code, Vol. IV.

[2] Mad. Code, Vol. I.

[3] The words and figures "and whereas it is expedient for that purpose to repeal so much of Regulation XIX, 1810, of the Bengal Code, and Regulation VII, 1817, of the Madras Code, as relate to endowments for the support of mosques, Hindu temples or other religious purposes," were repealed by the Repealing Act, 1874 (16 of 1874).

[4] *Cf.* s. 13 of the General Clauses Act, 1897 (10 of 1897), Genl. Acts, Vol. IV.

[5] These words were substituted for the word and figure "section 1" by the Repealing and Amending Act, 1891 (12 of 1891).

or any public officer, the Local Government shall, as soon as possible after the passing of this Act, make special provision as hereinafter provided.

Transfer to trustees, etc., of trust-property in charge of Revenue Board.

4. In the case of every such mosque, temple or other religious establishment which, at the time of the passing of this Act, shall be under the management of any trustee, manager or superintendent, whose nomination shall not vest in, nor be exercised by, nor be subject to the confirmation of the Government or any public officer, the Local Government shall, as soon as possible after the passing of this Act, transfer to such trustee, manager or superintendent, all the landed or other property which, at the time of the passing of this Act, shall be under the superintendence or in the possession of the Board of Revenue or any local agent, and belonging to such mosque, temple or other religious establishment, except such property as is hereinafter provided;

Cessation of Board's powers as to such property.

and the powers and responsibilities of the Board of Revenue, and the local agents, in respect to such mosque, temple or other religious establishment, and to all land and other property so transferred, except as regards acts done and liabilities incurred by the said Board of Revenue or any local agent, previous to such transfer, shall cease and determine.

Procedure in case of dispute as to right of succession to vacated trusteeship.

5. Whenever from any cause a vacancy shall occur in the office of any trustee, manager or superintendent, to whom any property shall have been transferred under the last preceding section, and any dispute shall arise respecting the right of succession to such office, it shall be lawful for any person interested in the mosque, temple or religious establishment to which such property shall belong; or in the performance of the worship or of the service thereof, or the trusts relating thereto, to apply to the Civil Court to appoint a manager of such mosque, temple or other religious establishment, and thereupon such Court may appoint such manager to act until some other person shall by suit have established his right of succession to such office.

Powers of managers appointed by Court.

The manager so appointed by the Civil Court shall have and shall exercise all the powers which, under this or any other Act, the former trustee, manager or superintendent, in whose place such manager is appointed by the Court, had or could exercise in relation to such mosque, temple or religious establishment, or the property belonging thereto.

Rights, etc., of trustees to whom property is transferred under section 4.

6. The rights, powers and responsibilities of every trustee, manager or superintendent, to whom the land and other property of any mosque, temple or other religious establishment is transferred in the manner prescribed in section 4 of this Act, as well as the conditions of their appointment, election and removal, shall be the same as if this Act had not been passed, except in respect of the liability to be sued under this Act, and except in respect of the authority of the Board of Revenue and local agents, given by the Regulations hereby repealed, over such mosque,

temple or religious establishment, and over such trustee, manager or superintendent, which authority is hereby determined and repealed.

All the powers which might be exercised by any Board or local agent for the recovery of the rent of land or other property transferred under the said section 4 of this Act, may, from the date of such transfer, be exercised by any trustee, manager or superintendent to whom such transfer is made. Appointment of committees.

7. In all cases described in section 3 of this Act the Local Government shall once for all [1] appoint one or more committees in every division or district to take the place, and to exercise the powers, of the Board of Revenue and the local agents under the Regulations hereby repealed. Constitution and duties of committees.

Such committee shall consist of three or more persons, and shall perform all the duties imposed on such Board and local agents, except in respect of any property which is specially provided for under section 21 of this Act.

8. The members of the said committee shall be appointed from among persons professing the religion for the purposes of which the mosque, temple or other religious establishment was founded or is now maintained, and in accordance, so far as can be ascertained, with the general wishes of those who are interested in the maintenance of such mosque, temple or other religious establishment. Qualifications of member of committee.

The appointment of the committee shall be notified in the official Gazette.

In order to ascertain the general wishes of such persons in respect of such appointment, the Local Government may cause an election to be held, under such [2] rules (not inconsistent with the provisions of this Act) as shall be framed by such Local Government. Ascertaining wishes of persons interested.

9. Every member of a committee appointed as above shall hold his office for life, unless removed for misconduct or unfitness; Tenure of office.

and no such member shall be removed except by an order of the Civil Court as hereinafter provided. Removal.

10. Whenever any vacancy shall occur among the members of a committee appointed as above, a new member shall be elected to fill the vacancy by the persons interested as above provided. Vacancies to be filled.

The remaining members of the committee shall, as soon as possible, give public notice of such vacancy, and shall fix a day, which shall not be later than three months from the date of such vacancy, for an election of a new member by the persons interested as above provided, under [3] rules for elections which shall be framed by the Local Government; Procedure.

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[1] For Committees appointed in—

(1) Ajmer-Merwara, *see* Aj. R. & O., Vol. I.

(2) Madras, *see* Mad. R. & O., Vol. I.

[2] For rules made under section 8 for Madras, *see* Mad. R. & O., Vol. I.

[3] For rules under section 10 for the U. P., *see* the U. P. List of R. & O., Vol. I.

and whoever shall be then elected, under the said rules, shall be a member of the committee to fill such vacancy.

When Court may fill vacancy.

If any vacancy as aforesaid shall not be filled up by such election as aforesaid within three months after it has occurred, the Civil Court, on the application of any person whatever, may appoint a person to fill the vacancy or may order that the vacancy be forthwith filled up by the remaining members of the committee, with which order it shall then be the duty of such remaining members to comply; and, if this order be not complied with, the Civil Court may appoint a member to fill the said vacancy.

No member of committee to be also trustee, etc., of mosque, etc.

11. No member of a committee appointed under this Act shall be capable of being, or shall act, also as a trustee, manager or superintendent of the mosque, temple or other religious establishment for the management of which such committee shall have been appointed.

On appointment of committee, Board and local agents to transfer property.

12. Immediately on the appointment of a committee as above provided for the superintendence of any such mosque, temple or religious establishment, and for the management of its affairs, the Board of Revenue, or the local agents acting under the authority of the said Board, shall transfer to such committee all landed or other property which at the time of appointment shall be under the superintendence, or in the possession of the said Board or local agents, and belonging to the said religious establishment, except as is hereinafter provided for,

Termination of powers and responsibilities of Board and agents.

and thereupon the powers and responsibilities of the Board and the local agents, in respect to such mosque, temple or religious establishment, and to all land and other property so transferred, except as above, and except as regards acts done and liabilities incurred by the said Board or agents previous to such transfer, shall cease and determine.

Commencement of powers of committee.

All the powers which might be exercised by any Board or local agent for the recovery of the rent of land or other property transferred under this section may from the date of such transfer be exercised by such committee to whom such transfer is made.

Duty of trustee, etc., as to accounts;

13. It shall be the duty of every trustee, manager and superintendent of a mosque, temple or religious establishment to which the provisions of this Act shall apply to keep regular accounts of his receipts and disbursements in respect of the endowments and expenses of such mosque, temple or other religious establishment;

and of committee.

and it shall be the duty of every committee of management, appointed or acting under the authority of this Act, to require from every trustee, manager and superintendent of such mosque, temple or other religious establishment, the production of such regular accounts of such receipts and disbursements at least once in every year; and every such committee of management shall themselves keep such accounts thereof.

Person interested may singly sue in

14. Any person or persons interested in any mosque, temple or religious establishment, or in the performance of the worship or of the

service thereof, or the trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court the trustee, manager or superintendent of such mosque, temple or religious establishment or the member of any committee appointed under this Act, for any misfeasance, breach of trust or neglect of duty, committed by such trustee, manager, superintendent or member of such committee, in respect of the trusts vested in, or confided to them respectively; case of breach of trust, etc.

and the Civil Court may direct the specific performance of any act by such trustee, manager, superintendent or member of a committee, Powers of Civil Court.

and may decree damages and costs against such trustee, manager, superintendent or member of a committee,

and may also direct the removal of such trustee, manager, superintendent or member of a committee.

15. The interest required in order to entitle a person to sue under the last preceding section need not be a pecuniary, or a direct or immediate, interest or such an interest as would entitle the person suing to take any part in the management or superintendence of the trusts. Nature of interest entitling person to sue.

Any person having a right of attendance, or having been in the habit of attending, at the performance of the worship or service of any mosque, temple or religious establishment, or of partaking in the benefit of any distribution of alms, shall be deemed to be a person interested within the meaning of the last preceding section.

16. In any suit or proceeding instituted under this Act it shall be lawful for the Court before which such suit or proceeding is pending to order any matter in difference in such suit to be referred for decision to one or more arbitrators. Reference to arbitrators.

Whenever any such order shall be made, the provisions of Chapter VI of the [1] Code of Civil Procedure shall in all respects apply to such order and arbitration, in the same manner as if such order had been made on the application of the parties under [1] section 312 of the said Code. Act VIII of 1859 applied.

17. Nothing in the last preceding section shall prevent the parties from applying to the Court, or the Court from making the order of reference, under the said section 312 of the said [1] Code of Civil Procedure. Reference under Act VIII of 1859.

18. No suit shall be entertained under this Act without a preliminary application being first made to the Court for leave to institute such suit.[2] * * * * * * * * * Application for leave to institute suits.

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[1] *See* now the Code of Civil Procedure (Act V of 1908).

[2] The words " The application may be made upon unstamped paper " by the Court-fees Act, 1870 (7 of 1870), Genl. Acts, Vol. II.

The Court, on the perusal of the application, shall determine whether there are sufficient *primâ facie* grounds for the institution of a suit, and, if in the judgment of the Court there are such grounds, leave shall be given for its institution.[1] * * * * * *

Costs.

If the Court shall be of opinion that the suit has been for the benefit of the trust, and that no party to the suit is in fault, the Court may order the costs or such portion as it may consider just to be paid out of the estate.

Court may require accounts of trust to be filed.

19. Before giving leave for institution of a suit, or, after leave has been given, before any proceeding is taken, or at any time when the suit is pending, the Court may order the trustee, manager or superintendent, or any member of a committee, as the case may be, to file in Court the accounts of the trust, or such part thereof as to the Court may seem necessary.

Proceedings for criminal breach of trust.

20. No suit or proceeding before any Civil Court under the preceding sections shall in any way affect or interfere with any proceeding in a Criminal Court for criminal breach of trust.

Cases in which endowments are partly for religious and partly for secular purposes.

21. In any case in which any land or other property has been granted for the support of an establishment partly of a religious and partly of a secular character,

or in which the endowment made for the support of an establishment is appropriated partly to religious and partly to secular uses,

the Board of Revenue, before transferring to any trustee, manager or superintendent, or to any committee of management appointed under this Act, shall determine what portion, if any, of the said land or other property shall remain under the superintendence of the said Board for application to secular uses,

and what portion shall be transferred to the superintendence of the trustee, manager or superintendent, or of the committee,

and also what annual amount, if any, shall be charged on the land or other property which may be so transferred to the superintendence of the said trustee, manager or superintendent, or of the committee, and made payable to the said Board or to the local agents, for secular uses as aforesaid.

In every such case the provisions of this Act shall take effect only in respect to such land and other property as may be so transferred.

Government not to hold charge henceforth of property for sup-

22. Except as provided in this Act, it shall not be lawful [2] * * * for any Government in India, or for any officer of any Government in his official character,

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[1] The words " In calculating the costs at the determination of the suit, the stamp duty on the preliminary application shall be estimated and shall be added to the costs of the suit," were repealed by the Court-fees Act, 1870 (7 of 1870), Genl. Acts, Vol. II.

[2] The words " after the passing of this Act " were repealed by the Repealing Act, 1874 (16 of 1874).

to undertake or resume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any mosque, temple or other religious establishment, or

port of any mosque, temple, etc.

to take any part in the management or appropriation of any endowment made for the maintenance of any such mosque, temple or other establishment, or

to nominate or appoint any trustee, manager or superintendent thereof, or to be in any way concerned therewith.

23. Nothing in this Act shall be held to affect the provisions of the [1] Regulations mentioned in this Act, except in so far as they relate to mosques, Hindu temples and other religious establishments; or to prevent the Government from taking such steps as it may deem necessary, under the provisions of the said regulations, to prevent injury to and preserve [2] buildings remarkable for their antiquity, or for their historical or architectural value or required for the convenience of the public.

Effect of Act in respect of Regulations therein mentioned, and of buildings of antiquity, etc.

24. The word [3] "India" in this Act shall denote the territories which are or may become vested in Her Majesty by the [4] Statute 21 & 22 Vict., c. 106, entitled "An Act for the better government of India."

"India."

21 & 22 Vict., c. 106.

THE WASTE LANDS CLAIMS ACT, 1863.

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[1] Namely, Ben. Reg. 19 of 1810 (Ben. Code, Vol. IV), and Mad. Reg. 7 of 1817 (Mad. Code, Vol. I).

[2] *See* now also the Ancient Monuments Preservation Act, 1904 (7 of 1904), Genl. Acts, Vol. VI.

[3] That is, "British India." *Cf.* definition of "British India" and "India" in s. 3 (7) and 3 (27), respectively, of the General Clauses Act, 1897 (10 of 1897), Genl. Acts, Vol. V.

[4] *See* "the Government of India Act, 1858" (21 & 22 Vict., c. 106), Coll. Stats., Ind., Vol. II.

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ACT No. XXIII OF 1863 [1].

[*10th March, 1863.*]

An Act to provide for the adjudication of claims to waste lands.

Preamble. WHEREAS it is expedient to make special provision for the speedy

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[1] Short title, "The Waste Lands (Claims) Act, 1863." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV. For Proceedings relating to the Bill, *see* Calcutta Gazette, 1863, Supplement, p. 109.

This Act has been declared to be in force in—

the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II;

the Arakan Hill Districts, by the Arakan Hill Districts Laws Regulation, 1874 (9 of 1874), s. 3, Bur. Code.

It has further been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

West Jalpáiguri . . .	*See* Gazette of India, 1881, Pt. I, p. 1.	
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44) and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum	Ditto	1881, Pt. I, p. 504.
The Porahat estate in the Singbhum District . .	Ditto	1897, Pt. I, p. 1059.
Kumáon and Garhwál . .	Ditto	1876, Pt. I, p. 605.
The Scheduled portion of the Mirzápur District . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar . . .	Ditto	1879, Pt. I, p. 382.
The Districts of Házara, Peshawar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Peshawar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575: but its application to that part of the Hazára district known as Upper Tanawal has been barred by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punj. and N.-W. Code*) .	Ditto	1886, Pt. I, p. 48.
The District of Lahaul . .	Ditto	1886, Pt. I, p. 301.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The Districts of Kámrup, Naugong, Darrang, Sibságar, Lakhimpur, Goálpára (excluding the Eastern Dvárs) and Cachar (excluding the North Cachar Hills) . .	Ditto	1878, Pt. I, p. 533.

It has been declared under s. 3 (*b*) of the same Act not to be in force in the Scheduled Districts in Ganjam and Vizagapatam, *see* Gazette of India, 1898, Pt. I, p. 872.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

Western Dvárs	*See* Gazette of India, 1875, Pt. I, p. 497.	
The Tarái of the Province of Agra	Ditto	1876, Pt. I, p. 505.

adjudication of claims which may be preferred to waste lands proposed to be sold, or otherwise dealt with, on account of Government, and of objections taken to the sale or other disposition of such lands; It is enacted as follows:—

Provision for enquiry in claims to land, or objections to sale of same.

1. When any claim shall be preferred to any waste land proposed to be sold, or otherwise dealt with, on account of Government, or when any objection shall be taken to the sale or other disposition of such land, the Collector of the district in which such land is situate, or other officer performing the duties of a Collector of Land Revenue in such district by whatever name his office is designated, shall, if the claim or objection be preferred within the period mentioned in the advertisement to be issued for the sale or other disposition of such land, which period shall not be less than three months, proceed to make an enquiry into the claim or objections.

Procedure in such cases.

2. The Collector or other officer as aforesaid shall call upon the claimant or objector to produce any evidence, or documents, upon which he may rely in proof of his claim or objection; and after considering the same, and making any further enquiry that may appear proper, shall dispose of the case by an order for the admission or rejection of the claim or objection; and if the land is proposed to be sold, for the sale of the same subject to any condition or reservation which, to such Collector or other officer as aforesaid, shall appear to be proper.

Notification of conditions.

If the land is ordered to be sold subject to any condition or reservation, such condition or reservation shall be notified to intending purchasers at the time of sale.

Postponement of sale pending enquiry,

3. Pending an enquiry into any claim or objection under the last preceding section, the Collector or other officer as aforesaid shall postpone the sale or other disposition of the land;

to allow claimant to contest rejection of claim.

and, if he shall order that such claim or objection be rejected, he shall further postpone the sale or other disposition of the land, to allow the claimant or objector to contest the order of rejection in the manner hereinafter provided.

Sale to be stopped if claim appear to be established, but may afterwards be proceeded with.

4. If the Collector or other officer as aforesaid shall consider the claim or objection to be established, and that the sale or other disposition of the land should not take place, he shall stop the sale or other disposition of the land;

but such sale or other disposition of the land may afterwards be proceeded with, if, on an order issued by the Local Government to try the claim or objection, as provided in section 6 of this Act, the claimant or objector shall fail to establish the same.

Delivery to claimant of copy of order of rejection or of sale.

5. If the Collector or other officer as aforesaid shall order that the claim or objection be rejected, or that the land be sold subject to any condition or reservation, or that it be otherwise dealt with, he shall cause a copy of such order to be delivered to the claimant or objector;

and if such claimant or objector shall not, within one week from the delivery of such copy, or within such further time as the Collector or other officer as aforesaid, for any special reason to be recorded, shall see fit to grant, give notice in writing to such Collector or other officer as aforesaid, that he intends to contest such order, the order shall be final. Order when final.

If the claimant or objector shall, within the time allowed, give such notice, the Collector or other officer as aforesaid shall immediately make a report to the Board of Revenue or other superior revenue authority; and shall forward with such report a copy of his order, stating fully all the circumstances of the case, and the evidence adduced in support, or otherwise, of the claim or objection; Report to Board.

and such Board, or other authority, on the receipt of such report, and after calling for any further information which it may consider necessary, may confirm, modify or reverse the order of the Collector or other officer as aforesaid. Decision of Board.

If the Board or other authority as aforesaid confirm the order of the Collector or other officer as aforesaid, or modify such order in such manner as to leave any part of such order in force adverse to the claimant or objector, the Collector or other officer as aforesaid shall certify such order to the Court constituted as hereinafter provided; Certification to Court.

and such Court shall forthwith give notice to the claimant or objector; Notice to claimant.

and if such claimant or objector shall not [1] * * * * institute a suit in such Court to establish his claim or objection, the order of the Board or other authority aforesaid shall be final. Decision when final.

6. The Local Government may, within twelve months after the date on which the claim of any claimant of waste land, or the objection of any objector, as aforesaid, shall have been admitted under this Act by the Collector or other officer as aforesaid, direct a suit to be brought to try the claim or objection of the claimant or objector, in a Court constituted as hereinafter provided. Power to order suit to try claim admitted by Collector.

7. For the investigation and trial of claims under this Act, the Local Government shall constitute, in every district in which there may be any waste lands capable of being sold, or otherwise dealt with, on account of Government, a Court consisting of an uneven number of persons, not less than three, of whom the Judge of the district, or the officer presiding in the principal Civil Court of original jurisdiction in the district, by whatever name his office may be designated, shall be one. Special Court for trying claims.

[1] The words " within thirty days from the delivery of such notice from the Court " were repealed by the Indian Limitation Act, 1871 (9 of 1871). For limitation, *see* now the Indian Limitation Act, 1908 (9 of 1908), Genl. Acts, Vol. VI.

Power of members.

Any one or more of the members of which such Court shall consist shall have power to make all such orders in the case as may be necessary prior to the hearing of the suit:

Exclusion of officer making original enquiry.

Provided that, whenever the Collector, or other officer, by whom the original enquiry was held, is the officer presiding in the principal Civil Court of original jurisdiction in the district, such officer shall not be a member of such Court.

Notice of constitution of Special Courts.

8. Whenever any Court is constituted under this Act, notice thereof shall be given by a written proclamation, copies of which shall be affixed in the several Courts, and in the offices of the several Collectors and Magistrates of the district:

Claims not cognizable in other Courts.

and from the date of the issue of such proclamation no other Court shall be competent to entertain any claim or objection belonging to the class of claims or objections for the trial and determination of which such Court is constituted.

Special Courts where held.

9. The Courts constituted under this Act shall be held at such place, or places, within the limits of their respective jurisdictions, as shall be considered most convenient.

Plaintiff and defendant in suit under section 5.

10. In every suit instituted under section 5 of this Act, the claimant of the waste land, or objector to the sale or other disposition of such land, shall appear as plaintiff; and the Collector, or other officer aforesaid, shall appear as defendant on the part of Government.

Appearance.

Either party may appear by pleader or by agent:

Proviso.

Provided that, if such other officer as aforesaid be the presiding officer of the principal Civil Court of original jurisdiction in the district, the Local Government shall appoint some other officer to appear as defendant in the case on its behalf.

Plaintiff and defendant in suits under section 6.

In any suit ordered to be instituted by the Local Government under section 6 of this Act, the Government, by any officer, to be appointed for the purpose, shall appear as plaintiff; and the claimant or objector as aforesaid shall appear as defendant.

Regulation of proceedings.

11. In suits instituted under this Act, except as hereinafter provided, the proceedings shall be regulated, so far as they can be, by the Code of Civil Procedure.

Procedure before hearing.

12. The Court shall fix a day for the appearance of the parties, and for the hearing of the suit, of which due notice shall be given to the parties or their agents; and on the day so fixed, the parties or their agents shall bring their witnesses into Court, together with any documents on which they may intend to rely in support of their respective statements.

Procuring attendance of witnesses.

If either party require the assistance of the Court to procure the attendance of a witness on such day, he shall apply to the Court in sufficient time before the day fixed for the hearing of the suit; and the

Court shall issue a subpœna requiring such witness to attend the Court on that day.

Power to require attendance of claimant.

It shall be competent to the Court to require the personal attendance of the claimant of the waste land, or objector, as aforesaid, on the day fixed for the hearing, or at any subsequent stage of the suit.

Procedure on hearing.

13. On the day fixed for the hearing of the suit, or as soon after as may be practicable, the Court shall proceed to examine the claimant of the waste land, or the objector, or his agent (when his personal attendance is not required), and the witnesses of the parties;

and upon such examination, and after inspecting the documents of the parties, and making any further enquiry that may appear necessary, shall proceed to pass such order in the case as it may consider just and proper.

No appeal or revision.

14. No appeal shall lie from any decision or order passed under this Act, nor shall any such decision or order be open to revision.

Reference of question of law, etc., to High Court, etc.

15. If, on the trial of any suit under this Act, any question of law or of usage having the force of law, or the construction of a document affecting the merits of the case, shall arise, on which the Court shall entertain reasonable doubts, the Court may, either of its own motion, or on the application of any of the parties to the suit, draw up a statement of the case and submit it, with its own opinion, for the opinion of the High Court of Judicature, or of the highest Civil Court of Appeal and Revision in the territory in which the land is situate:

When reference obligatory.

Provided that it shall be the duty of every Court held under this Act to make such reference to such High Court, or Court of Appeal, if, in any suit under this Act, any question shall arise involving any principle of general importance, or the rights of a class.

Court may proceed notwithstanding reference,

16. The Court may proceed in the case notwithstanding a reference to the High Court, or other highest Civil Court of Appeal as aforesaid; and may pass an order contingent upon the opinion of the High Court, or other Court as aforesaid, on the point referred;

but not make final order.

but no final order for the sale or other disposition of the land in question in the suit, or for the admission or rejection of any claim or objection which shall be before the Court in such suit, shall be passed, until the receipt of the order of the said High Court, or highest Civil Court of Appeal.

Records of cases where to be deposited.

17. The record of cases disposed of by Courts constituted under this Act shall be deposited amongst the records of the principal Civil Court of original jurisdiction in the district in which the property in dispute is situate.

Limitation as to claims to land sold or dealt with.

18. No claim to any land, or to compensation or damages in respect of any land, sold or otherwise dealt with on account of Government as waste land, shall be received after the expiration of three years from

the date on which such land shall have been delivered by the Government to the purchaser, or otherwise dealt with.

Provision for such claims if preferred within time.

If within three years after any lands have been delivered by the Government to the purchaser, or otherwise dealt with, any claimant or objector shall prefer a claim to the land so delivered, or otherwise dealt with, or an objection to such sale, or to compensation or damages in respect thereof, in the Court constituted under this Act for the district in which the land is situate; and shall show good and sufficient reason for not having preferred his claim or objection to the Collector or other officer as aforesaid, within the period limited under section 1 of this Act; such Court shall file the claim or objection, making the claimant or objector plaintiff, and the Collector of the district or other officer as aforesaid (with the like provision as aforesaid if such other officer be the presiding officer of the principal Civil Court of original jurisdiction in the district), the defendant in the suit;

and the foregoing provisions of this Act shall be applicable to the trial and determination of the suit.

The report of the officer employed to give delivery, or to take possession, on the part of Government, of the land sold or otherwise dealt with, shall be conclusive evidence as to the date on which such delivery was made, or possession was taken.

If claim established, possession not to be given, but compensation.

19. In any case in which the land has been sold, if the Court shall be of opinion that the claim of the claimant is established, the Court shall not award the claimant possession of the land in dispute; but shall order him to receive from the Government Treasury, by way of compensation, a sum equal to the price at which the land was sold, in addition to the costs of suit.

When land sold not absolutely, or not sold, but otherwise dealt with.

20. If the land shall have been sold subject to any condition or reservation, or shall not have been sold, but shall have been otherwise dealt with on account of the Government, and the Court shall be of opinion that the claim to such land, or the objection of an objector, is established, the Court shall award the claimant or objector to receive such sum, in respect of his interest in such land, as shall be awarded in that behalf under the provisions of [1] Act VI of 1857 (*for the acquisition of land for public purposes*),

and thereupon the Local Government shall proceed under the said Act to obtain an award of the value of such interest.

Award under two last sections to be in full satisfaction.

21. An award under any of the provisions of the two last preceding sections shall be in full satisfaction of the claim of the claimant or objector; and shall bar any future claim on his part, in respect to the land in suit resting on the same cause of action, or on a cause of action

[1] *See* now the Land-acquisition Act, 1894 (1 of 1894), s. 2, Genl. Acts, Vol. IV.

which existed prior to the date of the sale or other disposition of the land on account of Government.

Government not barred from awarding compensation for land absolutely sold, though claim be not preferred in time.

22. Nothing in this Act shall be held to prevent the Local Government from awarding, to any claimant of waste land sold on account of Government, on proof to the satisfaction of the Local Government of the claim of such claimant (notwithstanding that he may not have preferred his claim either to the Collector or other officer as aforesaid, or to the proper Court constituted under this Act, within the period prescribed by this Act), such amount as compensation for the said land, within the limit as to amount mentioned in section 19 of this Act, if the land have been sold not subject to any condition or reservation, as to such Local Government may seem proper.

Compensation for land sold subject to condition, if claim proved, though not preferred in time.

23. If the land have been sold subject to any condition or reservation, or have been otherwise disposed of, on account of Government, and any claim to such land, or objection to the sale or other disposition of the land, shall be proved to the satisfaction of the Local Government, although not preferred to the Collector or other officer as aforesaid, or to the Court constituted under this Act, within the period prescribed by this Act, the Local Government may award to such claimant or objector such amount as to such Local Government may appear to be the value of the interest of such claimant or objector in such land.

Interpretation-clause.

24. Unless the contrary appears from the context, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number; and words importing the masculine gender shall include females.

Number.

Gender.

ACT No. XXXI OF 1863 [1].

[*16th December, 1863.*]

An Act to give effect to the publication of certain orders and other matters in the *Gazette of India*.

Preamble.

WHEREAS the Governor General of India in Council has resolved to publish an official Gazette to be called the *Gazette of India*, containing

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[1] Short title, "The Official Gazettes Act, 1863." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

For the Statement of Objects and Reasons of the Bill which became Act 31 of 1863, *see* the Calcutta Gazette, 1863, p. 3288 and for Proceedings relating to the Bill, *see ibid*, Supplement, pp. 573 and 582.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

such orders, notifications and other matters as the Governor General of India in Council shall direct to be inserted therein; It is enacted as follows:—

Publication in *Gazette of India* to have effect of publication in other Gazettes in which publication is prescribed by law.

1. When in any Regulation or Act now in operation, or in any rule having the force of law, it is directed that any order, notification or other matter shall be published in the official Gazette of any presidency or place, such order, notification or other matter shall be deemed to be duly published in accordance with the requirements of the law if it be published either in the Gazette in which it would have appeared but for the passing of this Act, or in the *Gazette of India* under the directions of the Governor General of India in Council.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India, 1880, Pt. 1, p. 672.	
West Jalpáiguri, the Western Dvárs, the Western Hills of Dárjiling, the Dárjiling Tarái, and the Damson Subdivision of the Dárjiling District	Ditto	1881, Pt. 1, p. 74.
The Districts of Hazáribagh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum .	Ditto	1881, Pt. I, p. 504.
The Scheduled Districts in Ganjam and Vizagapatam .	Ditto	1898, Pt. I, p. 870.
The Scheduled portion of the Mirzapur District . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán and Dera Ghazi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Peshawar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575; but its application to that part of the Hazára District known as Upper Tanawal is barred by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punj. and N.-W. Code*) . . .	Ditto	1886, Pt. I, p. 48.
The District of Lahaul . .	Ditto	1886, Pt. I, p. 306.
The Scheduled Districts of the Central Provinces . . .	Ditto	1879, Pt. I, p. 771.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushái Hills) . .	Ditto	1897, Pt. I, p. 299.

It has been extended, by notification, under s. 5 of the last-mentioned Act, to the Scheduled Districts of Kumáon and Garhwál. *See* Gazette of India, 1876, Pt. I, p. 606.

ACT No. III OF 1864 [1].

[*12th February, 1864.*]

An Act to give the Government certain powers with respect to Foreigners.

WHEREAS it is expedient to make provision to enable the Government to prevent the subjects of Foreign States from residing or Preamble.

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[1] Short title, "the Foreigners Act, 1864." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

For special direction from Parliament to pass this Act, *see* s. 84 of the Government of India Act, 1833 (3 & 4 Will. IV, c. 85), Coll. Stats. Ind., Vol. I.

For the Statement of Objects and Reasons of the Bill which became Act 3 of 1864, *see* Calcutta Gazette, 1863, p. 2163; for Proceedings relating to the Bill, *see ibid*, *Supplement*, p. 581, and Gazette of India, 1864, Supplement, p. 41.

The Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has been declared in force in—

Upper Burma generally (except the Shan States) by the Burma Laws Act 1898 (13 of 1898), s. 4 (*1*) and Sch. I, Bur. Code; but its application to Chins in the Chin Hills has been barred by the Chin Hills Regulation, 1896 (5 of 1896), Bur. Code; and to hill-tribes in a hill-tract to which the Regulation applies by the Kachin Hill Tribes Regulation, 1895 (1 of 1895), Bur. Code.

the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), Ben. Code, Vol. I;

the Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (9 of 1874), s. 3, Bur. Code;

British Baluchistan and the Agency Territories by the British Baluchistan Laws Regulation, 1890 (1 of 1890), s. 3, and the Baluchistan Agency Laws Law, 1890, s. 4 (*1*), respectively, Bal. Code;

Angul District by the Angul District Regulation, 1894 (1 of 1894), s. 3, Ben. Code, Vol. I.

It has been declared, by notification, under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India,	1878, Pt. I, p. 482.
Aden	Ditto	1879, Pt. I, p. 434.
West Jalpáiguri, the Western Dvars, the Western Hills of Dárjiling, the Dárjiling Tarái, and the Damson Subdivision of the Dárjiling District	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum	Ditto	1881, Pt. I, p. 504.
The Porahat Estate in the Singbhum District . .	Ditto	1897, Pt. I, p. 1059.
The Scheduled portion of the Mirzápur District . . .	Ditto	1879, Pt. I, p. 383.

sojourning in British India, or from passing through or travelling therein, without the consent of the Government; It is enacted as follows:—

Interpretation.

1. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say:—

"British India."

The words [1] "British India" shall denote the territories which are or may become vested in Her Majesty by the [2] Statute 21 and 22 Victoria, Chap. 106, entitled "An Act for the better Government of India":

"Local Government."

the words "Local Government" shall denote the persons authorized to administer the executive government in any part of British India, or the chief executive officer of any part of British India under the immediate administration of the Governor General of India in Council, when such chief executive officer shall, by an [3] order of the Governor General of India in Council published in the Gazette of India, be

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Jaunsar Báwar	*See* Gazette of India, 1879, Pt. I, p. 382.	
The Districts of Hazára, Peshâwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Peshâwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid., *1902, Pt. I, p. 575; but its application in that part of the Hazára District known as Upper Tanawal has been barred by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punj. and N.-W. Code*)	Ditto	1886, Pt. I, p. 48.
The District of Lahaul . .	Ditto	1886, Pt. I, p. 301.
The Scheduled Districts of the Central Provinces . .	Ditto	1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam .	Ditto	1898, Pt. I, p. 870.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushâi Hills) . .	Ditto	1897, Pt. I, p. 299.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—

Kumáon and Garhwal . .	*See* Gazette of India, 1876, Pt. I, p. 606.	
The Tarái of the Province of Agra	Ditto	1876, Pt. I, p. 505.

[1] *Cf.* definition of "British India" in the Interpretation Act (52 & 53 Vict., c. 63), s. 18, and in the General Clauses Act, 1897 (10 of 1897), s. 3 (7), Genl. Acts Vol. IV.

[2] *See* the Government of India Act, 1858 (21 & 22 Vict., c. 106), Coll. Stats. Ind., Vol. I.

[3] For order authorizing the Chief Commissioner of Ajmer-Merwara to exercise the powers vested in a Local Government under the Act, *see* Gazette of India, 1876, Pt. I, p. 346.

authorized to exercise the powers vested by this Act in a Local Government:

"Foreigner." the word "foreigner" shall denote a person, not being either a natural-born subject of Her Majesty within the meaning of the [1] Statute 3 and 4 William IV, Chap. 85, section 81, or a Native of British India:

"Magistrate of the district." the words "the Magistrate of the District" shall denote the chief officer charged with the executive administration of a district and exercising the powers of a Magistrate, by whatever designation the chief officer charged with the executive administration is styled, or, in the absence of such officer from the station at which his Court is usually held, the senior officer at the station exercising the powers of a Magistrate as defined in the [2] Code of Criminal Procedure:

"Vessel." the word "vessel" shall include any thing made for the conveyance by water of human beings or property [3]:

Number. words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number:

Gender. words importing the masculine gender shall include females.[4]

Proof of being a foreigner. **2.** If a question shall arise whether any person alleged to be a foreigner and to be subject to the provisions of this Act is a foreigner or not, or is or is not subject to the provisions of this Act, the onus of proving that such person is not a foreigner, or is not subject to the provisions of this Act, shall lie upon such person.

Government may order any foreigner to remove himself. **3.** The Governor General of India in Council may, by writing, order any foreigner to remove himself from British India, or to remove himself therefrom by a particular route to be specified in the order; and any Local Government may, by writing, make the like order with reference to any foreigner within the jurisdiction of such Government.

Foreigner refusing to remove, or returning without license after removal, may be apprehended and detained. **4.** If any foreigner ordered to remove himself from British India, or ordered to remove himself therefrom by a particular route, shall neglect or refuse so to do, or if any foreigner, having removed himself from British India in consequence of an order issued under any of the provisions of this Act, or having been removed from British India under any of the said provisions, shall wilfully return thereto without a license in writing granted by the Governor General of India in Council or by the Local Government under whose order he shall have removed himself or been removed, such foreigner may be apprehended and detained in safe custody, until he shall be discharged therefrom by order of the Governor General of India in Council, or of the

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[1] *See* the Government of India Act, 1833 (3 & 4 Will. IV, c. 85), Coll. Stats. Ind., Vol. I.

[2] *See* now Act 5 of 1898, Genl. Acts, Vol. V.

[3] *Cf.* definition in s. 3 (*56*) of the General Clauses Act, 1897, Genl. Acts, Vol. IV.

[4] *Cf.* definition in s. 13 of the General Clauses Act, 1897, Genl. Acts, Vol. IV.

Local Government within whose jurisdiction he shall be so apprehended or detained, upon such terms and conditions as the said Governor General of India in Council or Local Government shall deem sufficient for the peace and security of British India, and of the allies of Her Majesty, and of the neighbouring Princes and States.

Governor General may order all the provisions of this Act to be in force in British India, or in any part thereof.

5. Whenever the Governor General of India in Council shall consider it necessary to take further precautions in respect of foreigners residing or travelling in British India or any part thereof, it shall be lawful for the Governor General of India in Council, by a [1] notification published in the Gazette of India, to order that the provisions of this and the subsequent sections of this Act shall be in force in British India, or in such part thereof as shall be specified in such notification, for such period as shall be therein declared; and thereupon, and for such period, the whole of this Act including this and the subsequent sections shall have full force and effect in British India or such part thereof as shall have been so specified. The Governor General of India in Council may, from time to time, by a notification published as aforesaid, cancel or alter any former notification which may still be in force, or may extend the period declared therein: Provided that none of the provisions of this or the subsequent sections of this Act shall extend to any foreign minister duly accredited by his Government; to any consul or vice-consul; to any person under the age of fourteen years; or to any person in the service of Her Majesty.

Proviso.

Every foreigner to report his arrival in India in certain cases.

6. Every foreigner on arriving in any part of British India in which all the provisions of this Act are for the time being in force under an order issued as provided in the last preceding section, from any port or place not within British India, or from any port or place within British India where all the provisions of this Act are not in force, shall, if he arrive at a presidency-town, forthwith report himself to the Commissioner of Police of such town, or, if he arrive at any other place, then he shall forthwith report himself to the Magistrate of the district, or to such other officer as shall be appointed to receive such reports, by the Governor General of India in Council or by the Local Government of such place.

What to be stated in the report.

7. The report shall be in writing, and shall be signed by the person reporting himself, and shall specify his name or names, the nation to which he belongs, the place from which he shall have come, the place or places of his destination, the object of his pursuit, and the date of his arrival in such presidency-town or other place. The report shall be recorded by the officer to whom it is made.

Foreigners, being masters of

8. The provisions of the last two preceding sections shall not extend to any person being the master or commander of a vessel or employed

[1] No notification appears to have been issued under this power, and the only provisions of the Act which are so far operative are those of ss. 1 to 4.

therein, but if any such person shall be in any part of British India in which all the provisions of this Act are for the time being in force, after he shall have ceased to be actually employed in a vessel, he shall forthwith report himself in manner aforesaid.

vessels or employed therein, to report themselves when they cease to be so employed.

9. If any foreigner shall neglect to report himself as required by this Act, he may be dealt with in the manner hereinafter provided in respect of foreigners travelling without a license.

Foreigners neglecting to report themselves, may be dealt with in like manner as foreigners travelling without a license.

10. No foreigner shall travel in or pass through any part of British India in which all the provisions of this Act are for the time being in force without a license.

No foreigner to travel in India without a license.

11. Licenses under this Act may be granted by the Governor General of India in Council or by any of the Local Governments, under the signature of a Secretary to the Government of India or to such Local Government, as the case may be, or by such other officers as shall be specially authorized to grant licenses by the Governor General of India in Council, or by any of the Local Governments.

License by whom to be granted.

12. Every such license shall state the name of the person to whom the license is granted, the nation to which he belongs, the district or districts through which he is authorized to pass or the limits within which he is authorized to travel, and the period (if any) during which the license is intended to have effect.

What to be stated in license.

13. The license may be granted subject to such conditions as the Governor General of India in Council or the Local Government may direct, or as the officer granting the license may deem necessary. Any license may be revoked at any time by the Governor General of India in Council, or by the Local Government of any part of British India in which all the provisions of this Act are for the time being in force and in which the foreigner holding the same may be, or by the officer who granted the license.

License may be granted subject to conditions, and may be revoked.

14. If any foreigner travel in or attempt to pass through any part of British India without such license as aforesaid, or beyond the districts or limits mentioned therein, or after such license shall have been revoked, or shall violate any of the conditions therein specified, he may be apprehended without warrant by any officer exercising any of the powers of a Magistrate, or by any European commissioned officer in the service of Her Majesty, or by any member of a volunteer corps enrolled by authority of Government whilst on duty, or by any police-officer.

Foreigner travelling without or contrary to the conditions of license may be apprehended.

Procedure upon apprehension.

15. If any person be apprehended by a person not exercising any of the powers of a Magistrate and not being a police-officer, he shall be delivered over as soon as possible to a police-officer, and forthwith carried before the Magistrate of the district. Whenever any person shall be apprehended by or taken before the Magistrate of the district, such Magistrate shall immediately report the case to the Local Government to which he is subordinate, and shall cause the person brought before him to be discharged, or to be conveyed to one of the presidency-towns, or pending the orders of such Government to be detained.

Magistrate to report to Government.

Persons apprehended may be admitted to bail.

16. Any person apprehended or detained under the provisions of this Act may be admitted to bail by the Magistrate of the district, or by any officer authorized to grant licenses, and shall be put to as little inconvenience as possible during his detention in custody.

Removal of persons apprehended.

17. The Local Government of any part of British India in which all the provisions of this Act are for the time being in force may order any person apprehended or detained under the provisions of this Act to remove himself from any such part of British India, by sea or by such other route as the said Local Government may direct; or the said Local Government may cause him to be removed from such part of British India by such route and in such manner as to such Local Government shall seem fit. The Governor General of India in Council may exercise all the powers given by this section to any Local Government.

Governor General may prohibit persons not being natural-born subjects from travelling or passing through any part of India without a license.

18. The Governor General of India in Council may by order prohibit any person or any class of persons not being natural-born subjects of Her Majesty within the meaning of the [1] Statute 3 and 4 William IV, Chap. 85, section 81, from travelling in or passing through any part of British India in which all the provisions of this Act may, for the time being, be in force, and from passing from any part thereof to another without a license to be granted by such officer or officers as shall be specified in the order: and, if any person so prohibited shall wilfully disobey such order, he may be apprehended without warrant by any of the officers specified in section 14 of this Act, and carried before the Magistrate of the district, and dealt with under the provisions of section 17 in the same manner as if he were a foreigner: and the Governor General of India in Council may order such person to be detained in safe custody or under the surveillance of the police so long as it may be deemed necessary for the peace and security of British India or any part thereof.

Also the Local Governments within their

19. The Local Government of any presidency or place in which all the provisions of this Act may, for the time being, be in force, may by order prohibit any person or any class of persons not being natural-born

[1] *See* the Government of India Act, 1833 (3 & 4 Will. IV, c. 85) Coll. Stats. Ind., Vol. I.

subjects of Her Majesty within the meaning of the [1] Statute 3 and 4 William IV, Chap. 85, section 81, from travelling in or passing through such presidency or place or any part thereof, and from passing from any part thereof to another, without a license to be granted by such officer or officers as shall be specified in the order; and, if any person so prohibited shall wilfully disobey such order, he may be apprehended without warrant by any of the officers specified in section 14 of this Act, and carried before the Magistrate of the district, and dealt with under the provisions of section 17 in the same manner as if he were a foreigner; and the Local Government may order such person to be detained in safe custody or under the surveillance of the police so long as it may be deemed necessary for the peace and security of British India or any part thereof. respective jurisdictions.

Certain officers may board vessels to ascertain whether foreigners are on board.

20. It shall be lawful for the Commissioner of Police, or for the Magistrate of the district, or for any officer appointed to receive reports as mentioned in the sixth section of this Act, or for any police-officer under the authority of such Commissioner or Magistrate, to enter any vessel in any port or place within British India in which all the provisions of this Act may, for the time being, be in force, in order to ascertain whether any foreigner bound to report his arrival under the said section 6 of this Act is on board of such vessel; and it shall be lawful for such Commissioner of Police, Magistrate or other officer as aforesaid to adopt such means as may be reasonably necessary for that purpose; and the master or commander of such vessel shall also, before any of the passengers are allowed to disembark, if he shall be required so to do by such Commissioner of Police, Magistrate, or other officer as aforesaid, deliver to him a list in writing of the passengers on board, specifying the ports or places at which they embarked, and the ports or places of their disembarkation, or intended disembarkation, and answer to the best of his knowledge all such questions touching the passengers on board the said vessel, or touching those who may have disembarked in any part of British India, as shall be put to him by the Commissioner of Police, Magistrate, or other officer as aforesaid. If any foreigner on board such vessel in any part of British India shall refuse to give an account of his objects of pursuit in India, or if his account thereof shall not be satisfactory, the officer may refuse to allow him to disembark, or he may be dealt with in the same manner as a foreigner travelling in British India without a license.

Master of vessel to furnish list of passengers, and to give information respecting them.

Foreigner refusing to give account of himself, not to be allowed to disembark.

Penalty for false answer or report.

21. If the master or commander of a vessel shall wilfully give a false answer to any question which by section 20 of this Act he is bound to answer, or shall make any false report, he shall be held to have

[1] *See* the Government of India Act, 1833 (3 & 4 Will. IV, c. 85) Coll. Stats. Ind., Vol. I.

committed the offence specified in section 177 of the [1] Indian Penal Code. XLV of 1860.

Penalty for neglect by master of vessel to comply with requisitions of Act.

22. If the master or commander of any vessel shall wilfully neglect or refuse to comply with the requisitions of this Act, he shall, on conviction before the Magistrate of the district or a Justice of the Peace, be liable to a fine not exceeding two thousand rupees.

Penalty for obstructing officers.

23. Whoever intentionally obstructs any officer in the exercise of any of the powers vested in him by this Act shall be held to have committed the offence specified in section 186 of the Indian Penal Code.[1] XLV of 1860.

Fines imposed under this Act how to be recovered.

24. All fines imposed under this Act may [2][be recovered in the manner provided by the law for the time being in force for the recovery of [3] fines imposed by Criminal Courts].

Persons may be exempted from provisions of this Act.

25. The Governor General of India in Council, or the Local Government of any part of British India in which this Act may, for the time being, be in force, may exempt any person, or any class of persons, either wholly or partially, or temporarily or otherwise, from all or any of the provisions of this Act contained in any of the sections subsequent to section 5, and may at any time revoke any such exemption.

ACT No. VI OF 1864.[4]

[*18th February, 1864.*]

An Act to authorize the punishment of whipping in certain cases.

Preamble.

WHEREAS it is expedient that in certain cases offenders should be

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[1] *Supra*, p. 247.

[2] These words were substituted for the words "according as they shall have been imposed for offences committed within or for offences committed beyond the limits of the Towns of Calcutta, Madras and Bombay, be recovered by a Magistrate of Police or by the Magistrate of the District in the manner prescribed in section 26 of Act 48 of 1860 (*to amend Act 13 of 1856, for regulating the Police of the Towns of Calcutta, Madras and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore and Malacca*)" by the Amending Act, 1891 (12 of 1891), Genl. Acts, Vol. V.

[3] *See* sections 386 to 389 of the Code of Criminal Procedure, 1898 (Act 5 of 1898), Genl. Acts, Vol. V, as to recovery of fines imposed by Criminal Courts. The provisions of these sections have also been declared by s. 25 of the General Clauses Act, 1897 (10 of 1897), Genl. Acts, Vol. IV, to apply to all fines imposed under any Act, Regulation, rule or bye-law, unless they contain an express provision to the contrary.

[4] Short title, "The Whipping Act, 1864." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

For Statement of Objects and Reasons, *see* Calcutta Gazette, 1862, p. 751, and for Proceedings relating to the Bill, *see ibid*, Supplement, pp. 28 and 72; Gazette of India, 1864, Supplement, pp. 28, 68 and 77.

Act 6 of 1864 was declared by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II, to be in force in the whole of British India, except as regards the Scheduled Districts.

liable * * * * * * to the punishment of whipping; It is enacted as follows:—

1. In addition to the punishments described in section 53 of the Whipping

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It has been applied to the Santhál Parganas, by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), Ben. Code, Vol. I; to British Baluchistan and the Agency Territories, by the British Baluchistan Laws Regulation, 1890 (1 of 1890), s. 3, and the Baluchistan Agency Laws Law, s. 4 (*1*), respectively, Bal. Code; to the Angul District by the Angul District Regulation, 1894 (1 of 1894), s. 3, Ben. Code, Vol. I; and (with a modification) to Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s. 4, Bur. Code. It has been applied, save s. 6, as to which *see* note to this Act, *infra*, to the Shan States [except the States of Hkamti Long and Möng-Mit (Momeik)] by the Shan States Laws and Criminal Justice Order, 1895, Bur. Code; and to the Shan State of Möng-Mit (Momeik) and its dependency Möng-Läng, by Notification No. 15, Burma Gazette, 1896, Pt. I, p. 252. Under the notification last-mentioned, all enactments then in force in Upper Burma, except those in force in the town of Mandalay only, were extended to that State.

It has also been applied to Hill-tribes to which the Kachin Hill-tribes Regulation, 1895 (1 of 1895), is applied, *see* ss. 1 (*3*) and 3 (*1*); to Hill-tribes to which the Chin Hills Regulation, 1896 (5 of 1896), is applied, *see* s. 3 and Schedule, for these Regulations, *see* Bur. Code; to the Chittagong Hill Tracts, by the Chittagong Hill Tracts Regulation, 1900 (1 of 1900), E. B. & A. Code, Vol. I.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Kumáon and Garhwál . .	*See* Gazette of India,	1876, Pt. I, p. 605.
Sindh	Ditto	1878, Pt. I, p. 482.
The Districts of Kamrup, Nowgong, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Dvars) and Cachar (excluding the North Cachar Hills) . .	Ditto	1878, Pt. I, p. 533.
Coorg	Ditto	1878, Pt. I, p. 747.
Aden	Ditto	1879, Pt. I, p. 434.
Jaunsar Bawár	Ditto	1879, Pt. I, p. 382.
The Scheduled portion of the Mirzápur District . . .	Ditto	1879, Pt. I, p. 383.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The Scheduled Districts of the Central Provinces . . .	Ditto	1879, Pt. I, p. 771.
West Jalpáiguri, the Western Dvárs, the Western Hills of Dárjiling, the Dárjiling Tarái, and the Damson Sub-division of the Dárjiling District .	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum and Pargana Dhálbhum and the Kolhán in the District of Singbhum .	Ditto	1881, Pt. I, p. 374.
The Porahat Estate in the Singbhum District . .	Ditto	1897, Pt. I, p. 1059.
The Andaman and Nicobar Islands	Ditto	1882, Pt. I, p. 148.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now*		

added to the punishments described in section 53 of the Penal Code.

[1] Indian Penal Code, offenders are also liable to whipping [2] * * * XLV of 1860.

Offences punishable with whipping in lieu of other punishment prescribed by Penal Code.

[3] **2.** Whoever commits any of the following offences may be punished with whipping in lieu of any punishment to which he may for such offence be liable under the [1] Indian Penal Code, that is to say:— XLV of 1860.

Group A.

(*1*) theft, as defined in section 378 of the said Code;

(*2*) theft in a building, tent or vessel, as defined in section 380 of the said Code;

(*3*) theft by a clerk or servant, as defined in section 381 of the said Code;

(*4*) theft after preparation for causing death or hurt, as defined in section 382 of the said Code;

Group B.

(*5*) extortion by threat, as defined in section 388 of the said Code;

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form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and ibid, *1902, Pt. I, p. 575; but its application to that part of the Hazára District known as Upper Tanawal is barred by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punj. & N.-W. Code) See* Gazette of India, 1886, Pt. I, p. 48.

The District of Lahaul . .	Ditto	1886, Pt. I, p. 301.
The North Cachar Hills in the Cachar District, and the Eastern Dvárs in the Goálpára District	Ditto	1897, Pt. I, p. 299.
The Scheduled Districts in Ganjam and Vizagapatam .	Ditto	1898, Pt. I, p. 870.

The Act has been declared, by notification under ss. 3 and 5A of Act 14 of 1874, to be in force in Pargana Manpur in Central India, *see* Gazette of India, 1899, Pt. II, p. 419. The powers of a Local Government have been conferred on the Agent, Governor General, Central India, and also those of a High Court for the purposes of the Act.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the Tarái Sub-division of the Naini Tal district, *see* Gazette of India, 1876, Pt. I, p. 505; to the Garo Hills, the Khasi and Jaintia Hills and the Naga Hills, *see* Gazette of India, 1897, Pt. I, p. 302; and to the Lushái Hills, *see* Gazette of India, 1898, Pt. II, p. 345.

As to punishment of whipping for certain offences in places in which the Punjab Frontier Crimes Regulation, 1901 (3 of 1901), is in force, *see* ss. 1 (*3*) 2 and 16 (*2*) of the Regulation, Punj. & N.-W. Code.

The words " under the provisions of the Indian Penal Code " in the preamble were repealed by s. 4 of the Whipping Act, 1900 (5 of 1900), Genl. Acts, Vol. V.

[1] *Supra.*

[2] The words " under the provisions of the said Code " were repealed by s. 4 of the Whipping Act, 1900 (5 of 1900), Genl. Acts, Vol. V.

[3] Sections 2, 3 and 4 here printed were substituted by the Indian Criminal Law Amendment Act, 1895 (3 of 1895), s. 5, Genl. Acts, Vol. IV.

(*6*) putting a person in fear of accusation in order to commit extortion, as defined in section 389 of the said Code;

Group C.

(*7*) dishonestly receiving stolen property, as defined in section 411 of the said Code;

(*8*) dishonestly receiving property stolen in the commission of a dacoity, as defined in section 412 of the said Code;

Group D.

(*9*) lurking house-trespass, or house-breaking, as defined in sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section;

(*10*) lurking house-trespass by night, or house-breaking by night, as defined in sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section.

On second conviction of offence mentioned in section 2, whipping may be added to other punishment.

[1] **3.** Whoever, having been previously convicted of any one of the offences specified in the last preceding section, shall again be convicted of the same offence or of any offence included in the same Group of offences, may be punished with whipping in lieu of or in addition to any other [2] punishment to which he may for such offence be liable under the [3] Indian Penal Code.

XLV of 1860.

Offences punishable, in case of second conviction, with whipping in addition to other punishment.

[1] **4.** Whoever, having been previously convicted of any one of the following offences, shall be again convicted of the same offence, or of any offence included in the same Group of offences, may be punished with whipping in addition to any other [2] punishment to which he may be liable under the [3] Indian Penal Code, that is to say:—

XLV of 1860.

Group A.

(*1*) giving or fabricating false evidence in such manner as to be punishable under section 193 of the [3] Indian Penal Code;

(*2*) giving or fabricating false evidence with intent to procure conviction of a capital offence, as defined in section 194 of the said Code;

(*3*) giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment, as defined in section 195 of the said Code;

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[1] *See* third foot-note on preceding page.

[2] By s. 391 (*3*) of the Code of Criminal Procedure, 1898 (5 of 1898), no person shall be sentenced to whipping in addition to imprisonment when the imprisonment is for less than three months.

[3] *Supra.*

Group B.

(*4*) falsely charging any person with having committed an unnatural offence, as defined in sections 211 and 377 of the said Code;

Group C.

(*5*) assaulting or using criminal force to any woman with intent to outrage her modesty, as defined in section 354 of the said Code;

(*6*) rape, as defined in section 375 of the said Code;

(*7*) unnatural offences, as defined in section 377 of the said Code;

Group D.

(*8*) robbery or dacoity, as defined in sections 390 and 391 of the said Code;

(*9*) attempting to commit robbery, as defined in section 393 of the said Code;

(*10*) voluntarily causing hurt in committing robbery, as defined in section 394 of the said Code;

Group E.

(*11*) habitually receiving or dealing in stolen property, as defined in section 413 of the said Code;

Group F.

(*12*) forgery, as defined in section 463 of the said Code;

(*13*) forgery of a document, as defined in section 466 of the said Code;

(*14*) forgery of a document, as defined in section 467 of the said Code;

(*15*) forgery for the purpose of cheating, as defined in section 468 of the said Code;

(*16*) forgery for the purpose of harming the reputation of any person, as defined in section 469 of the said Code;

Group G.

(*17*) lurking house-trespass, or house-breaking, as defined in sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section;

(*18*) lurking house-trespass by night, or house-breaking by night, as defined in sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section.

Additional punishment of whipping for rape in certain cases.

[1] **4A.** Whenever any Local Government has, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, declared the provisions of this section to be in force in any local area within its province, any person in that local area, who, being a member of an assembly of two or more persons, the common object of which assembly is to commit rape as defined in section 375 XLV of 1860. of the [2] Indian Penal Code, abets, commits or attempts to commit such offence, may be punished with whipping in addition to any other punishment to which, for such abetment, offence or attempt, he may be liable under the said Code.

Juvenile offenders when punishable with whipping.

[3] **5.** Any juvenile offender who abets, commits or attempts to commit—

(*a*) any offence which is punishable under the [2] Indian Penal XLV of 1860. Code otherwise than with death, or

(*b*) any offence which is punishable under any other law with imprisonment,

may be punished with whipping in lieu of any other punishment to which he may for such offence, abetment or attempt be liable:

Provided that the Governor General in Council may, by notification in the Gazette of India, direct that the punishment of whipping shall not be inflicted in respect of such offences falling under clause (*b*) as he may think fit to specify in this behalf.

Explanation.—In this section the expression "juvenile offender" means an offender whom the Court, after making such enquiry (if any) as may be deemed necessary, shall find to be under [4] sixteen years of age, the finding of the Court in all cases being final and conclusive.

When offences

[5] **6.** Whenever any Local Government shall by [6] notification in the

[1] This section was added by s. 2 of the Whipping Act, 1900 (5 of 1900), Genl. Acts, Vol. V.

[2] *Supra.*

[3] This section was substituted by the Whipping Act, 1900 (5 of 1900), for the section as amended by Act 3 of 1895, Genl. Acts, Vol. V.

[4] *Cf.* s. 4 (*a*) of the Reformatory Schools Act, 1897 (8 of 1897), General Acts, Vol. IV, where a "*youthful*" offender is defined to be any boy, who, at the time of the conviction of the offence there referred to, is under fifteen years of age.

[5] This s. 6 does not apply to Upper Burma, *see* the Burma Laws Act, 1898 (13 of 1898), s. 4 (*3*), cl. (*b*), Bur. Code, or to hill-tribes to which the Kachin Hill-tribes Regulation, 1895 (1 of 1895), is applied, *see* ss. 1 (*3*) and 3 (*1*), or to the hill-tribes to which the Chin Hills Regulation, 1896 (5 of 1896), is applied, *see* s. 3 and Schedule (for these enactments, *see* Bur. Code, Ed. 1899); or to the Chittagong Hill Tracts, *see* the Chittagong Hill Tracts Regulation, 1900 (1 of 1900), E. B. & A. Code, Vol. I, p. 281. The revised sections applicable thereto are printed in a note to this Act, *infra.*

[6] For notification extending the provisions of the Act to the hill-tracts within the jurisdiction of the Agent to the Governor, Ganjam District in Madras, *see* Vol. I, p. 10 of Mad. R. & O.

specified in section 4 may be punished with whipping in Frontier Districts.

official Gazette have declared the provisions of this section to be in force in any Frontier District or any wild tract of country within the jurisdiction of such Local Government, any person who shall in such district or tract of country after such notification as aforesaid commit any of the offences specified in section 4 of this Act, may be punished with whipping in lieu of any other punishment to which he may be liable under the [1] Indian Penal Code. XLV of 1860.

7. [[2]*Exemption of females and certain convicts.*] *Rep. by Act X of 1882.*

8. [*Certain classes of Magistrates to be specially empowered.*] *Rep. by Act X of 1872.*

9, 10. [[3] *Time and mode of whipping.*] *Rep. by Act XVI of 1874.*

11, 12. [*Punishment not to be inflicted if offender not in fit state of health, nor by instalments; procedure in certain cases.*] *Rep. by Act X of 1872.*

NOTE.

(*See* footnote on p. 430.)

I. Section 6 of Act VI of 1864, as in force in Upper Burma (except the Shan States), runs as follows [*see* [4]Act XIII of 1898, s. 4 (*1*), and (*3*) (*b*)]:—

Offenders punishable with whipping in certain other cases.

"6. (*1*) Notwithstanding anything in the foregoing sections of this Act, a person convicted of an offence specified in the List of offences annexed hereto or of any offence which the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the Burma Gazette, add to that list, shall be punishable with whipping, either in lieu of, or in addition to, any other punishment to which he may be liable.

"(*2*) The Local Government may, by notification in the Burma Gazette, suspend the operation of this section in whole or in part in any district or part of a district, and, with the previous sanction of the Governor General in Council, remove the suspension of its operation.

"(*3*) This section shall be read subject to the provisions of section 593 of the Code of Criminal Procedure, 1898." V of 1898.

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[1] *Supra.*

[2] For provisions dealing with these exemptions, *see* now s. 393 of the Code of Criminal Procedure, 1898 (Act 5 of 1898), Genl. Acts, Vol. V.

[3] For provisions dealing with this subject, *see* now ss. 390 to 395 of the Code of Criminal Procedure, 1898 (Act 5 of 1898), Genl. Acts, Vol. V.

[4] Burma Code, Ed. 1899, p. 262.

NOTE—*contd.*

"THE SCHEDULE.

(*See section 6, sub-section (1).*)

Section of Indian Penal Code.	Offence.
148	Rioting armed with deadly weapon.
302	Murder.
304	Culpable homicide not amounting to murder.
307	Attempt to murder.
325	Voluntarily causing grievous hurt.
326	Voluntarily causing grievous hurt by dangerous weapons or means.
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.
329	Voluntarily causing grievous hurt to extort property or a valuable security or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.
333	Voluntarily causing grievous hurt to deter public servant from his duty.
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing of such theft or to retiring after committing it, or to retaining property taken by it.
386	Extortion by putting a person in fear of death or grievous hurt.
387	Putting or attempting to put a person in fear of death or grievous hurt in order to commit extortion.
392	Robbery.
393	Attempt to commit robbery.
394	Person voluntarily causing hurt in committing, or attempting to commit, robbery, or any other person jointly concerned in such robbery.
395	Dacoity.
396	Murder in dacoity.
397	Robbery or dacoity, with attempt to cause death or grievous hurt.
398	Attempt to commit robbery or dacoity when armed with deadly weapon.
399	Making preparation to commit dacoity.
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.
402	Being one of five or more persons assembled for the purpose of committing dacoity.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.
435	Mischief by fire or explosive substance with intent to cause damage to amount of one hundred rupees or upwards, or, in case of agricultural produce, ten rupees or upwards.
436	Mischief by fire or explosive substance with intent to destroy a house, etc.
440	Mischief committed after preparation made for causing death or hurt, etc.
455	Lurking house-trespass or house-breaking, after preparation made for causing hurt, assault, etc.
458	Lurking house-trepass or house-breaking by night, after preparation made for causing hurt, etc.
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, etc.
506	Criminal intimidation, if threat be to cause death or grievous hurt, etc.
	Abetment of any of the foregoing offences.
	Attempt to commit any of those offences which are not themselves expressed to be attempts to commit offences."

NOTE—*contd.*

II. Section 6 of Act VI of 1864 as applicable to hill-tribes to which the Kachin Hill-tribes Regulation, 1895, is applied, runs as follows [*see* Reg. I of 1895, ss. 1 (*3*) and 3 (*1*)]:—

"Notwithstanding anything in the foregoing sections of this Act, a person convicted of any offence may be punished with whipping in lieu of, or in addition to, any other punishment to which he may be liable."

III. Section 6 of Act VI of 1864 as applicable to hill-tribes to which the Chin Hills Regulation, 1896, is applied, runs as follows [*see* Reg. V of 1896, s. 3 and Schedule]:—

"Notwithstanding anything in the foregoing sections, a person convicted of any offence may be punished with whipping in lieu of, or in addition to, any other punishment to which he may be liable."

IV. Section 6 of Act VI of 1864 as in force in the Chittagong Hill Tracts runs as follows [*see* Reg. I of 1900]:—

Whipping in lieu of, or in addition to, other punishment.

"Notwithstanding anything in the foregoing section, a person convicted of any offence may be punished with whipping in lieu of, or in addition to, any other punishment."

ACT No. XV OF 1864 [1].

[*24th March, 1864.*]

An Act to amend Act VIII of 1851 (*for enabling Government to levy Tolls on Public Roads and Bridges*).

Preamble.

WHEREAS by Act VIII of 1851 (*for enabling Government to levy Tolls on Public Roads and Bridges*) authority was given for the levy VIII of 1851.

[1] Short title, "The Indian Tolls Act, 1864." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

For Statement of Objects and Reasons to the Bill which was passed into law as Act 15 of 1864, *see* Gazette of India, 1864, p. 120, and for Proceedings relating to the Bill, *see ibid*, Supplement, pp. 39, 67, 77, 99 and 119.

This Act has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation, 1872 (3 of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), Ben. Code, Vol. I; in the Central Provinces by the Central Provinces Laws Act, 1875 (20 of 1875), C. P. Code. *See* also first foot-note to s. 3, *infra*.

It has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), but its application to hill-tribes in a hill tract to which the Regulation applies has been barred by the Kachin Hill Tribes Regulation, 1895 (1 of 1895), and to Chins in the Chin Hills by the Chin Hills Regulation, 1896 (1 of 1896), Bur. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely:—

The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum.	..*See* Gazette of India, 1881, Pt. I, p. 504

of certain rates of toll, not exceeding the rates mentioned in the schedule annexed to that Act; and whereas it is expedient to make certain alterations in respect to the rates in the said schedule mentioned; It is enacted as follows:—

Schedule of Act VIII of 1851 repealed and another substituted.

1. In any place to which this Act shall be extended by the Local Government, the schedule to the said [1] Act VIII of 1851 shall be of no effect except as to any proceedings pending at the time at which this Act shall be so extended, and except as to any rate of toll levied theretofore;

and all the provisions of the said Act applicable or referring to the rates of toll mentioned in the said schedule shall be applicable and refer to the rates of toll mentioned in the schedule to this Act annexed, which shall be read with and taken as part of the said [1] Act VIII of 1851.

Collectors of tolls may compound for tolls leviable under Act VIII of 1851 or this Act.

2. Any person entrusted with the management of the collection of tolls under [1] Act VIII of 1851 may in his discretion compound for any period not exceeding one year with any person for a certain sum to be paid by such person for himself or for any vehicle or animal kept by him, in lieu of the rates of toll specified in the schedule to the said Act VIII of 1851 or in the schedule to this Act.

Power to extend Act.

3. The Local Government may extend this [2] Act to any place in which the said Act VIII of 1851 is in force; and the Local Govern-

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The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Peshawar and Kohát now form the North-West Frontier Province*, see *Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575*); *but its application has been barred to that portion of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punj. and N.-W. Code*) . *See* Gazette of India, 1886, Pt. I, p. 48.

The District of Lahaul . . Ditto 1886, Pt. I, p. 301.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the Scheduled District of Coorg. *See* Gazette of India, 1878, Pt. I, p. 45.

The Act has been extended to Ajmer-Merwara along with Act 8 of 1851, *see* Gazette of India, 1889, Pt. II, p. 562; and to the Scheduled Districts in Vizagapatam and Ganjam, *see* Fort St. George Gazette, 1899, Pt. I, p. 1486, and *ibid*, 1900, Pt. I, p. 1101, respectively.

The Act is to be deemed to be and to have been in force in the Punjab, from the 24th March, 1864, *see* the Indian Tolls Act, 1888 (8 of 1888), s. 1, Genl. Acts, Vol. IV, and tolls levied or purporting to have been levied under the Act before the passing of Act 8 of 1888, are to be deemed to have been lawfully levied—*see* s. 3, ibid.

[1] *See supra.*

[2] The Act now regulating tolls in the Presidency of Bombay is Bombay Act 3 of 1875. That Act repealed Act 8 of 1851 in the Bombay Presidency, *see* s. 1, and declared that Act 15 of 1864 should be deemed to have been extended thereto as from the 30th July, 1864, *see* s. 2 (Bom. Code, Vol. I).

ment of any place in which the said Act VIII of 1851 is not in force may extend the said Act VIII of 1851 and this Act to such place.[1]

Interpretation-clause. Local Government.

4. For the purposes of this Act the words [2] "Local Government" shall denote the person authorized by law to administer executive government in any part of the territories vested in Her Majesty by the Statute 21 and 22 Vict., cap. 106, entitled "An Act for the better government of India."[3]

SCHEDULE.

	Rs.	A.	P.
On every four-wheeled carriage	2	0	0
On every two-wheeled carriage	1	0	0
On every ekka	0	4	0
On every hackery on springs	0	2	0
On every cart and hackery not on springs drawn by eight bullocks, buffaloes, horses, ponies, asses or mules, if laden	1	8	0
Ditto, if not laden	0	8	0
On every cart and hackery drawn by six bullocks, buffaloes, horses, ponies, asses or mules, if laden	0	12	0
Ditto, if not laden	0	6	0
On every cart or hackery drawn by four bullocks, buffaloes, horses, ponies, asses or mules, if laden	0	8	0
Ditto, if not laden	0	4	0
On every cart and hackery drawn by two bullocks, buffaloes, horses, ponies, asses or mules, if laden	0	4	0
Ditto, if not laden	0	2	0
Buffaloes or bullocks, per head, if laden	0	1	0
Ditto, if not laden	0	0	6
On every elephant	1	8	0
On every camel, if laden	0	8	0
Ditto, if not laden	0	4	0
On every horse, if laden or ridden	0	1	6
Ditto, unladen or led	0	0	9
On every tattù or mule, if laden or ridden	0	0	9
Ditto, unladen or led	0	0	6
On every ass, if laden or ridden	0	0	6
Ditto, unladen or led	0	0	3
On every sheep, or goat, or pig	0	0	1
On every palankeen, duli, palna or tonjon with eight bearers	1	0	0
Ditto, with six bearers	0	12	0
Ditto, with four bearers	0	8	0
Ditto, with two bearers	0	4	0
On every foot-passenger	0	0	3

N.B.—Animals drawing any vehicle for which toll can be demanded are not to be also charged with toll.

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[1] Both Acts have been extended to Oudh. *See* Gazette of India, 1865, Pt. I, p. 777, and the Central Provinces (*ibid*, Pt. I, 1871, p. 611); and to Lower Burma, *see* Notification No. 66, dated the 29th February, 1892, Bur. R. M.

[2] As to the authority of the Local Government in any part of British India not specified in s. 2 of the Indian Tolls Act, 1851 (8 of 1851), to which that Act and the Indian Tolls Act, 1864 (15 of 1864), may be or have been extended, *see* the Indian Tolls Act, 1888 (8 of 1888), s. 2 (*1*), Genl. Acts, Vol. IV.

[3] *See* "the Government of India Act, 1858" (21 & 22 Vict., c. 106), Coll. Stats. Ind., Vol. II.

THE OFFICIAL TRUSTEES ACT, 1864.

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6. Administrator General may be Official Trustee.
   Security to be given by Official Trustee.
7. Leave of absence of Official Trustee.
   Appointment of person to officiate.
8. Official Trustee may, with consent, be appointed Trustee of Settlement by grantor, etc.
   Vesting of property.
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11. Rate of commission under section 10.
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15. High Court may make orders as to trust-property vested in Official Trustee.
16. Re-transfer of trust-property to original, or transfer to other, trustee.
17. Order of appointment of Official Trustee.
    On death, etc., of Official Trustee, property to vest in successor.
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18. Official Trustee to sue or be sued by his name of office.
    Suit not to abate by death, etc.
    Continuance of suit.
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19. Accounts to be kept by Official Trustee.
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SECTIONS.

20. Chief Justice may make and alter rules and orders for custody of trust-funds, etc.
21. Publication of orders, etc.
22. Official Trustee to furnish annual schedules, which shall be filed in High Court.
Filing and inspection of schedules.
23. Chief Justice to appoint auditors.
24. Auditors to examine schedules and accounts of Official Trustee and to report to Chief Justice.
25. Auditor's power to summon witnesses and to call for books, etc.
Report to High Court of refusal or neglect to attend, or to produce books, etc.
Penalty.
26. Costs of preparing schedules, etc., how paid.
27. Matters to be reported by auditors.
28. Proceedings upon such report.
29. Costs upon such proceedings, etc., how defrayed.
30. Effect and execution of orders.
31. Who may apply for order under Act.
32. Executor or Administrator may pay to Official Trustee legacy, share, etc., of infant or lunatic.
Leave of Court.
Provisions applied to such property.
33. Compliance with requisitions for returns.
34. Division of the Presidency of Fort William in Bengal into Provinces.

ACT No. XVII OF 1864 [1].

[*24th March, 1864.*]

An Act to constitute an Office of Official Trustee.

Preamble.

WHEREAS it is expedient to amend the law relating to Official Trustees and to constitute an Office of Official Trustee; It is enacted as follows:—

Interpretation.

1. The following words and expressions in this Act shall have the meanings hereby assigned to them unless there be something in the context repugnant to such construction, that is to say:—

"Government."

The word [2] "Government" shall mean, in relation to the Presi-

[1] Short title, "The Official Trustees Act, 1864." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

For Statement of Objects and Reasons to the Bill which was passed into law as Act 17 of 1864, *see* Calcutta Gazette, 1863, p. 2006 and for Proceedings relating to the Bill, *see* Gazette of India, Supplement, 1864, pp. 83, 86, 98 and 122.

[2] The definition of the word "Government" in s. 1 was inserted by the Probate and Administration Act, 1890 (2 of 1890), s. 1, Genl. Acts, Vol. IV.

dency of Fort William in Bengal, the Governor General in Council; in relation to the Presidency of Fort St. George, the Governor of Fort St. George in Council; and in relation to the Presidency of Bombay, the Governor of Bombay in Council:

The expression "High Court" shall mean Her Majesty's High Courts of Judicature at Fort William in Bengal, Fort St. George and Bombay, respectively, in the exercise of their original civil jurisdiction. "High Court."

The expression "Chief Justice" shall mean the Chief Justice or acting Chief Justice for the time being of any of the said High Courts. "Chief Justice."

The word "person" shall include a corporation. "Person."

Words importing the singular number shall include the plural, and words importing the plural number shall include the singular. Number.

Words importing the masculine gender shall include females. Gender.

[1] **2.** In this Act references to the Presidency of Fort William in Bengal, the Presidency of Fort St. George and the Presidency of Bombay shall, as regards all persons for whom the Governor General in Council has for the time being power to make laws and regulations, be read as references to the Presidency of Bengal, the Presidency of Madras and the Presidency of Bombay, respectively, as those expressions are severally defined in the law for the time being in force relating to the office and duties of [2] Administrator General. Construction of references to Presidencies.

3. [*Official Trustees under Act XVII of 1843 continued.*] *Rep. by the Repealing Act, 1891 (XII of 1891).*

4. In each of the Presidencies of Fort William in Bengal, Fort St. George and Bombay, there shall be an Official Trustee. Number of Official Trustees.

The said Official Trustees shall be called the Official Trustee of Bengal, the Official Trustee of Madras, and the Official Trustee of Bombay, respectively. Titles.

[3] **5.** Every Official Trustee appointed under this Act [4] shall be appointed and may be suspended or removed from his Office by the Government. Appointment, suspension and removal of Official Trustees.

6. The Administrator General or Officiating Administrator General for the time being of any of the said Presidencies shall be eligible for the Office of Official Trustee of that Presidency. Administrator General may be Official Trustee.

Every Official Trustee appointed under this Act shall give security Security to be given by

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[1] Section 2 was inserted by the Probate and Administration Act, 1890 (2 of 1890), s. 2, Genl. Acts, Vol. IV. The original section as to repeal of Act 17 of 1843 was repealed by the Repealing Act, 1870 (14 of 1870).

[2] *See* the Administrator General's Act, 1874 (2 of 1874), Genl. Acts, Vol. II.

[3] This section was substituted for the original s. 5 by the Probate and Administration Act, 1890 (2 of 1890), s. 3, Genl. Acts, Vol. IV.

[4] Every person holding the office of Official Trustee at the commencement of Act 2 of 1890 is to be deemed to have been appointed under Act 17 of 1864 as amended by Act 2 of 1890, *see* s. 8 of the latter Act.

Official Trustee.

for the due execution of the duties of his office in such manner and to such amount as the [1][Government] shall direct.

Leave of absence of Official Trustee.

7.[2] [It shall be lawful for the Government] from time to time to grant leave of absence to the Official Trustee, but subject always to such and the like rules as may be for the time being in force as to leave of absence of officers attached to the High Court.

Appointment of person to officiate.

Whenever any Official Trustee shall obtain leave of absence it shall be lawful for the Government to appoint some person to officiate as Official Trustee, and such person while so officiating shall be subject to the same conditions and be bound by the same responsibilities as the Official Trustee, and he shall be deemed to be Official Trustee for the time being under this Act, and shall be liable to give security for the due execution of the duties of his office in like manner as if he had been appointed Official Trustee.

Official Trustee may, with consent, be appointed Trustee of Settlement by grantor, etc.

8. If any person shall be about to grant, assign or settle any property, moveable or immoveable, of what nature or kind soever, upon or subject to any trust, whether for a charitable purpose or otherwise, it shall be lawful for such person, with the consent of the Official Trustee to appoint him, by the deed creating the trust, to be the Trustee of such settlement;

Vesting of property.

and upon such appointment the property so granted, assigned or settled shall vest in such officer and his successors in office, and shall be held by him and them upon the trust declared and contained in the said deed:

Recital of consent.

Provided always that the consent of the Official Trustee shall be recited in the said deed, and that the deed shall be duly executed by the Official Trustee:

Provided also that no trust for any religious purpose shall ever be held by the Official Trustee, under this or under any other section of this Act.

Remuneration of Official Trustee appointed under section 8.

9. Every Official Trustee appointed trustee of any property under the last preceding section shall be entitled to receive by way of remuneration in that behalf such sum or sums only as he shall by the deed of settlement be declared to be entitled to receive.

Other circumstances under which Official Trustee may be appointed Trustee of property.

10. If any property is subject to a trust, whether for a charitable purpose or otherwise, and there shall be no trustee willing to act or capable of acting in the trusts thereof who is within the local limits of the ordinary or extraordinary original civil jurisdiction of the High Court, or

if property is subject to a trust, and all the trustees, or the surviving or continuing trustee and all the persons beneficially interested in the

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[1] The word "Government" in s. 6 was substituted for the words "Chief Justice by whom he is appointed" by the Probate and Administration Act, 1890 (2 of 1890), s. 4.

[2] These words in s. 7 were substituted for the words "It shall be lawful for the Chief Justice of the High Court at any of the Presidencies" by Act 2 of 1890, s. 5.

said trust shall be desirous that the Official Trustee shall be appointed in the room of such trustees or trustee,

then and in any such case it shall be lawful for the High Court on petition, and with the consent of the Official Trustee, to appoint the [1] Official Trustee to be the trustee of such property;

and upon such appointment such property shall vest in the Official Trustee and his successors in office, and shall be held by him and them upon the same trusts as the same were held previous to such appointment.

Rate of commission under section 10.

11. The Official Trustee shall be entitled by way of remuneration in respect of all trust-property transferred to him under the last preceding section, to a commission, the rate of which shall be as follows, that is to say,—

on all capital moneys received by him, a commission of one-half per cent. on receiving the same;

on all capital moneys invested by him, a commission of one-half per cent. on investing the same;

on all sums received by him by way of interest or dividends in respect of moneys invested, a commission of three-quarters per cent.;

on all rents collected by him, a commission of two and a half per cent.:

[2][Provided that the High Court, by its order appointing the Official Trustee to be trustee of such property, may, for special reasons to be recorded by the Court, direct that the Official Trustee shall be entitled by way of remuneration, in respect of the capital moneys, sums and rents aforesaid, or any of them, to a commission at rates or at a rate to be specified in the order and exceeding the rates or rate hereinbefore in this section prescribed.]

What expenses, etc., commission to cover.

12. The Official Trustee shall defray all the expenses of the establishment necessary for his office, including the provision of office accommodation, together with all other charges to which the said office shall be subject, except those for which express provision is made by this Act, and except those costs of litigation and the like which a trustee would, under ordinary circumstances, be entitled to pay for out of the trust moneys in his hand.

The commission to which the Official Trustee shall be entitled is intended to cover all the expenses and risk and responsibility of management, collection and distribution.

Official Trustee to be sole trustee.

13. It shall in no case be lawful to appoint the Official Trustee to be a trustee along with any other person; but the Official Trustee shall always be sole trustee.

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[1] *See* s. 32 of the Administrator General's Act, 1874 (2 of 1874), Genl. Acts, Vol. II.

[2] The proviso to s. 11 was added by the Probate and Administration Act, 1890 (2 of 1890), s. 6, Genl. Acts, Vol. IV.

Investment of trust-money.

14. The Official Trustee shall cause all capital moneys received by him to be invested in Government securities, or otherwise as the Court shall direct:

Alteration of improper investment.

and, if in any case the trust-funds or any part of them shall at the time of their vesting in the Official Trustee be invested otherwise than as provided in the deed or will creating the trust or than as ordered by the Court, it shall be the duty of the Official Trustee, as soon as he reasonably can, to realize the funds so improperly invested, and to invest the same in Government securities or otherwise as the Court shall direct.

High Court may make orders as to trust-property vested in Official Trustee.

15. The High Court may make any such orders as shall seem to it necessary respecting any trust-property vested in the Official Trustee, or the interest or produce thereof.

All such orders shall be made on petition, unless the Court shall direct a suit to be instituted.

Re-transfer of trust-property to original, or transfer to other, trustee.

16. Nothing in this Act shall prevent the re-transfer of any trust-property which may have become vested in the Official Trustee to the original or any subsequently appointed trustee, or to such person as the Court shall direct, unless otherwise provided by the deed or will creating the trust.

Order of appointment of Official Trustee,

17. All orders which shall be made appointing any Official Trustee to act as trustee in virtue of his office shall appoint him by his name of office and shall authorize the Official Trustee for the time being of the same Presidency to act as Official Trustee of the property to which such order shall relate:

On death, etc., of Official Trustee, property to vest in successor.

and all property and interests which at the time of the death, resignation or removal from office of any Official Trustee shall be vested in him by virtue of such order, shall upon such death, resignation or removal cease to be vested in him, and shall vest in his successor in office immediately upon his appointment thereto;

Transfer of books, etc.

and all books, papers and documents kept by such Official Trustee by virtue of his office shall be transferred to and vested in his successor in office.

Official Trustee to sue or be sued by his name of office.

18. All actions, suits or other proceedings which shall be commenced by or against any Official Trustee in his official character may be brought by or against him by his name of office;

Suit not to abate by death, etc.

and no suit, action or other proceeding already commenced or which shall be commenced by or against any person as Official Trustee, either alone or jointly with any other person, shall abate by reason of the death, resignation or removal from office of any such Official Trustee;

Continuance of suit.

but the same may, by order of the Court and upon such terms as to the service of notices or otherwise as the Court may direct, be continued against his successor immediately upon his appointment, in the same manner as if no such death, resignation or removal had occurred:

Provided that nothing herein contained shall render any such successor personally liable for any costs incurred prior to the order for continuing the action or suit against him, or shall release an Official Trustee who has resigned or been removed from his office, or the heirs, executors, administrators or representatives of a deceased Official Trustee, from being liable for any such costs. Liability for prior costs.

19. Every Official Trustee appointed under this Act shall enter into books to be kept by him for that purpose, separate and distinct accounts of each trust of which he is the trustee, and of all such sums of money and securities for money, goods and things, as shall come to his hands, or to the hands of any person employed by him, or in trust for him, under this Act, and likewise of all payments made by him on account of such trust, and of all debts due by or to the same, specifying the dates of such receipts and payments respectively; Accounts to be kept by Official Trustee.

which said books shall be kept in the Official Trustee's office, and shall be at all times open for the inspection of the Chief Justice and of any person authorized by him to demand inspection thereof. Inspection of books.

20. The Chief Justice shall have power, from time to time, to make and alter any general rules and orders consistently with the provisions of this Act— Chief Justice may make and alter rules and orders for custody of trust-funds, etc.

for the safe custody of the trust-funds and securities which shall come to the hands or possession of the Official Trustee, and

for the remittance to Europe or elsewhere of all sums of money which shall be payable or belong to persons resident in Europe or elsewhere, or in other cases where such remittances shall be required,

and generally for the guidance and government of the Official Trustee in the discharge of his duties;

and may by such rules and orders, amongst other things, direct what books, accounts and statements, in addition to those mentioned in this Act, shall be kept by the Official Trustee, and in what form the same shall be kept, and what entries the same shall contain, and where the same shall be kept, and where and how the funds and securities and other the property belonging to the trust of which the Official Trustee is the trustee shall be kept or invested or deposited, and how any remittances thereof shall be made.

21. Such orders shall be published in the official Gazette, and it shall be the duty of the several Official Trustees to obey and fulfil the same, and the same shall be a full authority and indemnity for all persons acting in pursuance thereof. Publication of orders, etc.

22. The Official Trustee of each of the said Presidencies shall once in every year, that is to say, on the first day of March, or on such other day as the Chief Justice shall direct, deliver to the Chief Justice— Official Trustee to furnish annual schedules, which shall

a true schedule showing the gross amount of all sums of money received or paid by him on account of each trust of which he is the trustee,

be filed in High Court.

and the balances during the year ending on the thirty-first day of December next before the day of delivering such schedule; and

a true list of all securities received on account of each of the said trusts during the same period; and also

a true schedule of all trusts which shall have come to an end or of which the Official Trustee shall have ceased to be the trustee and the property subject to which shall have been paid or made over to the persons entitled to the same or to new trustees during the same period, specifying the nature and amount or value of such property and the persons to whom paid or made over.

Filing and inspection of schedules.

The Chief Justice shall cause the said schedules to be filed as record in the High Court; but it shall not be lawful for any person to inspect the same or to make copies thereof, or of any part thereof, except on an order granted by the Chief Justice permitting him so to do.

Chief Justice to appoint auditors.

23. The Chief Justice shall from time to time appoint an auditor or auditors to examine the accounts of the Official Trustee at the time of the delivery of the said schedules and also at any other time when the Chief Justice shall think fit.

Auditors to examine schedules and accounts of Official Trustee and to report to Chief Justice.

24. The auditor or auditors shall examine the schedules and accounts, and report to the Chief Justice—

whether they contain a full and true account of every thing which ought to be inserted therein, and

whether the books which by this Act are, or which by any such general rules and orders as aforesaid shall be, directed to be kept by the Official Trustee have been duly and regularly kept, and

whether the trust-funds and securities have been duly kept and invested and deposited in the manner prescribed by this Act or which shall be prescribed by any such rules and orders to be made as aforesaid.

Auditors' power to summon witnesses and to call for books, etc.

25. Every auditor shall have power—

to summon as well the Official Trustee as any other person or persons whose presence he may think necessary, to attend him from time to time; and

to examine the Official Trustee or other party or parties, if he shall think fit, on oath or solemn affirmation to be by him administered; and to call for all books, papers, vouchers and documents which shall appear to him to be necessary for the purposes of the said reference;

Report to High Court of refusal or neglect to attend, or to produce books, etc.

and, if the Official Trustee or other person or persons when summoned shall refuse, or, without reasonable cause, neglect to attend or to produce any book, paper, voucher or document required, or shall attend and refuse to be sworn or make a solemn affirmation, when by law an affirmation may be substituted for an oath, or shall refuse to be examined, the auditor or auditors shall certify such neglect or refusal in writing to the High Court;

and every person so refusing or neglecting shall thereupon be punishable in like manner as if such refusal or neglect had been in contempt of the said High Court. Penalty.

26. The costs and expenses of preparing the said schedules and accounts and of every such reference and examination as aforesaid shall be defrayed by all the trust-estates to which such schedules or accounts shall relate, which costs and expenses, and the portion thereof to be contributed by each of the said trust-estates, shall be ascertained and settled by the auditor or auditors, subject to the approval of the Chief Justice, and shall be paid out of the said estates accordingly by the Official Trustee. Costs of preparing schedules, etc., how paid.

27. If upon any such reference and examination the auditor or auditors shall see reason to believe— Matters to be reported by auditors.

that the said schedules do not contain a true and correct account of the matters therein contained, or which ought to be therein contained, or

that the trust-funds and securities have not been duly kept and invested or deposited in the manner directed by this Act, or which shall be directed by any such rules and orders as aforesaid, or

that the Official Trustee has failed to comply with the provisions and directions of this Act, or of any such rules and orders,

he or they shall report accordingly to the Chief Justice.

28. The Chief Justice may refer every such report as last aforesaid to the consideration of the Advocate General for the Presidency, who shall thereupon, if he shall think fit, proceed summarily against the defaulter or his personal representative in the High Court by petition for an account, or to compel obedience to this Act or to such rules and orders as aforesaid, or otherwise as he may think fit, in respect of all or any of the trust-estates then or formerly under the charge of such defaulter; Proceedings upon such report.

and the Court shall have power, upon any such petition, to compel the attendance in Court of the defendant or defendants, and any witnesses who may be thought necessary, and to examine them orally or otherwise as the said Court shall think fit, and to make and enforce such order or orders as the Court shall think just.

29. The costs, including those of the Advocate General, and of the reference to him, if the same shall be directed by the Court to be paid, shall be defrayed either by the defendant or defendants, or out of the trust-estates rateably as the said Court shall direct; Costs upon such proceedings, etc., how defrayed.

and whenever any costs shall be recovered from the defendant or defendants the same shall be repaid to the estates by which the same shall have been in the first instance contributed, and the Court shall have power to order the Official Trustee or other person or persons, defendants, to receive his or her costs out of the said estates, if it shall think fit.

Effect and execution of orders.

30. Any orders which shall be made by any of the said High Courts shall have the same effect and be executed in the same manner as decrees.

Who may apply for order under Act.

31. Any order under this Act may be made on the applicatiin of any person beneficially interested in any trust-property, or of any trustee thereof, whether under disability or not.

Executor or administrator may pay to Official Trustee legacy, share, etc., of infant or lunatic.

32. If any infant or lunatic shall be entitled to any gift or legacy or residue or share thereof, it shall be lawful for the executor or administrator by whom such legacy, residue or share may be payable or transferable, or the party by whom such gift may be made, or any trustee of such gift, legacy, residue or share, to pay or transfer the same to the Official Trustee appointed under this Act:

Leave of Court.

Provided that the leave of the High Court to make such payment or transfer shall be first obtained by motion made on petition.

Provisions applied to such property.

Any money or property paid or transferred to the Official Trustee or vested in him under this section shall be subject to the same provisions as are contained in this Act as to other property vested in such Official Trustee under the provisions thereof.

Compliance with requisitions for returns.

33.[1] The Official Trustee shall comply with such requisitions as may be made by the Government for returns and statements in such form and manner as the Government may deem proper.

Division of the Presidency of Fort William in Bengal into Provinces.

34.[1] (*1*) Notwithstanding anything in the foregoing provisions of this Act, the Governor General in Council, upon the occurrence of any vacancy in the office of the Official Trustee of Bengal, may, by notification in the Gazette of India,—

(*a*) divide the Presidency of Fort William in Bengal into so many Provinces as he thinks fit,

(*b*) define the limits of each of those Provinces, and

(*c*) appoint an Official Trustee for each Province, and, subject to the provisions of this section, the following consequences shall thereupon ensue, namely—

(i) the office of Official Trustee of Bengal shall cease to exist;

(ii) the Official Trustee of a Province shall have the like rights and privileges, and perform the like duties, in the territories and dominions included in the Province as the Official Trustee of Bengal had and performed as Official Trustee therein;

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[1] Ss. 33 and 34 were added by the Probate and Administration Act, 1890 (2 of 1890), s. 7, Genl. Acts, Vol. IV.

(iii) the functions of the Government under this Act shall, as regards the territories and dominions included in the Province, be discharged by the Governor General in Council;

(iv) the functions of whatsoever kind assigned by the foregoing provisions of this Act to the High Court of Judicature at Fort William in Bengal in respect of the territories and dominions included in a Province shall be discharged by such High Court as the Governor General in Council may, by notification in the Gazette of India, appoint in this behalf;

(v) in the foregoing provisions of this Act, the word 'Presidency' shall be deemed to include a Province, the expression 'Chief Justice' the Chief Justice, senior Judge or sole Judge, as the case may be, of a High Court appointed by the Governor General in Council under clause (iv) of this sub-section, and the expression 'Advocate General' a Government Advocate or other officer appointed by the Governor General in Council to discharge for a Province the functions under this Act of an Advocate General for a Presidency: and,

(vi) generally, the provisions of the foregoing sections and of any other enactment for the time being in force with respect to the Official Trustee of Bengal shall, in relation to a Province, be construed, so far as may be, to apply to the Official Trustee appointed for the Province under this section.

(*2*) Any proceeding which was commenced before the publication of the notification dividing the Presidency of Fort William in Bengal into Provinces, and to or in which the Official Trustee of Bengal in his representative character was a party or was otherwise concerned, shall be continued as if the notification had not been published, and the official Trustee of the Province in which the Town of Calcutta is comprised shall for the purposes of the proceeding be deemed to be the successor in office of the Official Trustee of Bengal, and shall hold and execute the trusts of which immediately before the publication of the notification the Official Trustee of Bengal was trustee in all respects as if he were such successor.

[1] * * * * *

[1] Sub-section (*3*) was repealed by the Lower Burma Courts Act, 1900 (6 of 1900), s. 48, Bur. Code. It was as follows :—

"(*3*) The Court of the Recorder of Rangoon shall be deemed to be a High Court for the purposes of clause (iv) of sub-section (*1*)."

ACT No. III OF 1865.[1]

[*14th February, 1865.*]

An Act relating to the rights and liabilities of Common Carriers.

Preamble.

WHEREAS it is expedient not only to enable common carriers to limit their liability for loss of or damage to property delivered to them

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[1] For Statement of Objects and Reasons of the Bill which was passed into law as Act 3 of 1865, *see* Gazette of India Extraordinary, dated 1st August, 1864 and for Proceedings relating to the Bill, *see ibid*, Supplement, p. 497, and *ibid*, 1865, pp. 51, 64 and 65.

The Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has been applied to Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898); but its application to hill-tribes in a hill tract is barred by the Kachin Hill Tribes Regulation, 1895 (1 of 1895), and to Chins in the Chin Hills by the Chin Hills Regulation, 1896 (5 of 1896), Bur. Code. It has been applied to the Santhál Parganas, by the Santhál Parganas Settlement Regulation, 1872 (3 of 1872), s. 31, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), Ben. Code, Vol. I and to the Arakan Hill District (with a modification) by the Arakan Hill District Regulation, 1874 (9 of 1874), s. 3, Bur. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	. *See* Gazette of India, 1880, Pt. I, p. 672.	
West Jalpáiguri, the Western Hills of Dárjiling, the Dárjiling Tarái and the Damson Sub-division of the Dárjiling District	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum and Pargana Dhálbhum and the Kolhán in the District of Singbhum .	Ditto	1881, Pt. I, p. 504.
The Porahat Estate in the District of Singbhum . . .	Ditto	1897, Pt. I, p. 1059.
Kumáon and Garhwál . .	Ditto	1876, Pt. I, p. 605.
The Scheduled portion of the Mirzápur District . . .	Ditto	1878, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1878, Pt. I, p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán. (*Portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575: but its application to that*		

to be carried but also to declare their liability for loss of or damage to such property occasioned by the negligence or criminal acts of themselves, their servants or agents; It is enacted as follows:—

Short title. **1.** This Act may be cited as the Carriers Act, 1865.

Interpretation-clause. **2.** In this Act, unless there be something repugnant in the subject or context—

"Common carrier." "common carrier" denotes a person, other than the Government, engaged in the business of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately:

"Person." [1] "person" includes any association or body of persons, whether incorporated or not.

Number. words in the [2] singular number include the plural, and words in the plural include the singular.

Carriers not to be liable for loss of certain goods above one hundred rupees in value, unless delivered as such. **3.** No common carrier shall be liable for the loss of or damage to property delivered to him to be carried exceeding in value one hundred rupees and of the description contained in the schedule to this Act, unless the person delivering such property to be carried, or some person duly authorized in that behalf, shall have expressly declared to such carrier or his agent the value and description thereof.[3]

For carrying such property, payment may be required at rates fixed by carrier. **4.** Every such carrier may require payment for the risk undertaken in carrying property exceeding in value one hundred rupees and of the description aforesaid, at such rate of charge as he may fix:

Proviso. Provided that, to entitle such carrier to payment at a rate higher

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part of the Hazára district known as Upper Tanawal is barred by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punj. and N.-W. Code)	*See* Gazette of India,	1886, Pt. I, p. 48.
The Scheduled Districts of the Central Provinces . . .	Ditto	1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam .	Ditto	1898, Pt. I, p. 870.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushái Hills) . .	Ditto	1897, Pt. I, p. 299.

It has been declared, by notification under s. 3 (*b*) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul—*see* Gazette of India, 1886, Pt. I, p. 301.

It has been extended, by notification under s. 5 of the same Act, to the following Scheduled Districts, namely:—

The Tarái of the Province of Agra	*See* Gazette of India,	1876, Pt. I, p. 505.
Ajmer and Merwara . .	Ditto	1877, Pt. I, p. 605.

It has been repealed as to carriers by rail by the Indian Railways Act, 1879 (4 of 1879). For the Indian Railways Act now in force, *see* Act 9 of 1890, Genl. Acts, Vol. IV.

[1] *Cf.* definition in s. 3 (39) of the General Clauses Act, 1897 (10 of 1897), Genl. Acts, Vol. IV.

[2] *Cf.* s. 13 (2) of Act 10 of 1897.

[3] The earlier sections extend to India the principle embodied in the Carriers Act, 1830 (11 Geo. IV & I Wm. IV, c. 68). *See* Statement of Objects and Reasons quoted *supra*.

than his ordinary rate of charge, he shall have caused to be exhibited in the place where he carries on the business of receiving property to be carried, notice of the higher rate of charge required, printed or written in English and in the vernacular language of the country wherein he carries on such business.

The person entitled to recover in respect of property lost or damaged may also recover money paid for its carriage.

5. In case of the loss or damage to property exceeding in value one hundred rupees and of the description aforesaid, delivered to such carrier to be carried, when the value and description thereof shall have been declared and payment shall have been required in manner provided for by this Act, the person entitled to recover in respect of such loss or damage shall also be entitled to recover any money actually paid to such carrier in consideration of such risk as aforesaid.

In respect of what property liability of carrier not limited or affected by public notice.

6. The liability of any common carrier for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the Schedule to this Act, shall not be deemed to be limited or affected by any public notice; but any such carrier, not being the owner of a railroad or tramroad constructed under the provisions of [1]Act XXII of 1863 (*to provide for taking land for works of public utility to be constructed by private persons or Companies, and for regulating the construction and use of works on land so taken*) may, by special contract, signed by the owner of such property so delivered as last aforesaid or by some person duly authorized in that behalf by such owner, limit his liability in respect of the same.

Carriers, with certain exceptions, may limit liability by special contract.

Liability of owner of railroad or tramroad constructed under Act XXII of 1863, not limited by special contract.

[2]**7.** The liability of the owner of any railroad or tramroad constructed under the provisions of the said [1]Act XXII of 1863, for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the Schedule to this Act, shall not be deemed to be limited or affected by any special contract; but the owner of such railroad or tramroad shall be liable for the loss of or damage to property delivered to him to be carried only when such loss or damage shall have been caused by negligence or a criminal act on his part or on that of his agents or servants.

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Common carrier liable for loss or damage caused by neglect or fraud of himself or his agent.

8. Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss of or damage to any property delivered to such carrier to be carried where such loss or damage shall have arisen from the negligence or criminal act of the carrier or any of his agents or servants.

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[1] *See* now the Land-Acquisition Act, 1894 (1 of 1894), s. 2, Genl. Acts, Vol. IV.

[2] S. 7 (so far as it relates to railways) has been repealed by the Indian Railways Act, 1890 (9 of 1890), Ch. VII, s. 72, Genl. Acts, Vol. IV.

9. In any suit brought against a common carrier for the loss, damage or non-delivery of goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents.

Plaintiffs, in suits for loss, damage, or non-delivery, not required to prove negligence or criminal act.

[1]**10.** No suit shall be instituted against a common carrier for the loss of, or injury to, goods entrusted to him for carriage, unless notice in writing of the loss or injury has been given to him before the institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff.

Notice of loss or injury to be given within six months.

SCHEDULE.

Gold and silver coin.
Gold and silver in a manufactured or unmanufactured state.
Precious stones and pearls.
Jewellery.
Time-pieces of any description.
Trinkets.
Bills and hundis.
Currency notes of the Government of India, or notes of any Banks, or securities for payment of money, English or Foreign.
Stamps and stamped paper.
Maps, prints, and works of art.
Writings.
Title-deeds.
Gold or silver plate or plated articles.
Glass.
China.
Silk in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials.
Shawls and lace.
Cloths and tissues embroidered with the precious metals or of which such metals form part.
Articles of ivory, ebony or sandal wood.

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[1] Section 10 was added by the Indian Carriers Act, 1899 (10 of 1899), s. 2. The original section was repealed by the Indian Railways Act, 1890 (9 of 1890), Genl. Acts, Vol. IV. That section was as follows :—

"Nothing in this Act shall affect the provisions contained in the ninth, tenth, and eleventh sections of Act No. XVIII of 1854 (relating to Railways in India)."

THE INDIAN SUCCESSION ACT, 1865.

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Of the Refunding of Legacies.

316. Refund of legacy paid under Judge's orders.
317. No refund if paid voluntarily.
318. Refund when legacy has become due on performance of condition within further time allowed under section 124.
319. When each legatee compellable to refund in proportion.

SECTIONS.

320. Distribution of assets.
Creditor may follow assets.
321. Creditor may call upon legatee to refund.
322. When legatee, not satisfied or compelled to refund under section 321, cannot oblige one paid in full to refund.
323. When unsatisfied legatee must first proceed against executor, if solvent.
324. Limit to refunding of one legatee to another.
325. Refunding to be without interest.
326. Residue after usual payments to be paid to residuary legatee.
326A. Transfer of assets from British India to executor or administrator in country of domicile for distribution.

PART XL.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

327. Liability of executor or administrator for devastation;
328. For neglect to get in any part of property.

PART XLI.

MISCELLANEOUS.

329. } [*Repealed.*]
330. }
331. Succession to property of Hindus, etc., and certain wills, intestacies and marriages not affected.
332. Power of Governor General in Council to exempt any race, sect or tribe in British India from operation of Act.
333. Surrender of revoked probate or letter of administration.
SCHEDULE. [*Repealed.*]

ACT No. X OF 1865 [1].

[*16th March, 1865.*]

An Act to amend and define the Law of Intestate and Testamentary Succession in British India.

Preamble.

WHEREAS it is expedient to amend and define the rules of law applicable to Intestate and Testamentary Succession in British India; It is enacted as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the Indian Succession Act, 1865.

Act to constitute law

2. Except as provided by this Act or by any other law for the time

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[1] For Statement of Objects and Reasons of the Bill which was passed into law as Act 10 of 1865, *see* Gazette of India, Extraordinary, dated 1st July, 1864, p. 50; for Report of the Commissioners appointed in England with the object of preparing a body of substantive law for India, upon the law of Succession and Inheritance, applicable to all classes except Hindus and Muhammadans, *see ibid*, p. 53 and for Proceedings relating to the Bill, *see ibid* 1865, Supplement, pp. 75, 79 and 88. The original title of the Bill was the "Indian Civil Code, Chapter I," this was changed in the course of the Proceedings above referred to, to the present title.

For Civil Rules of practice made by the High Court, Madras, under this Act, the Code of Civil Procedure and certain other Acts for observance by subordinate Civil Courts in that Presidency, except the Small Cause Court at Madras, *see* Fort St. George Gazette, 1905, Supplement, p. 1.

This Act has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (20 of 1898), but its application to hill-tribes in a hill tract to which that Regulation applies is barred by the Kachin Hill Tribes Regulation, 1895 (1 of 1895), and to Chins in the Chin Hills by the Chin Hills Regulation, 1896 (5 of 1896), Bur. Code; it was declared in force in British Baluchistan and the Agency Territories by the British Baluchistan Laws Regulation, 1890 (1 of 1890), s. 3, and the Baluchistan Agency Laws Law, 1890 s. 4 (*1*), respectively, Bal. Code; and in the Santhál Parganas by the Santhál Parganas Settlement Regulation, 1872 (3 of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1886 (3 of 1886), s. 2, Ben. Code, Vol. I.

It has been declared in force in the Hill District of Arakan, but not so as to affect Native Christians, by the Arakan Hill District Laws Regulation, 1874 (9 of 1874), s. 3, Bur. Code.

Its application to the Pargana of Spiti is barred by the Spiti Regulation, 1873 (1 of 1873), Punj. & N.-W. Code; to the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (1 of 1900), E. B. & A. Code, Vol. I, and to that part of the Hazára District known as Upper Tanawal, by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punj. & N.-W. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

> the Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504, and the Tarái of the Province of Agra, *ib.*, 1876, Pt. 1, p. 505.

As to the application of portions of the Act to the wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay, *see* the Hindu Wills Act, 1870 (21 of 1870), Genl. Acts, Vol. II.

As to the exemption of Parsís from portions of the Act, *see* the Parsí Intestate Succession Act, 1865 (21 of 1865), s. 8, *infra*. For further exemptions from the Act, *see* ss. 331 and 332, *infra*.

of British India in cases of intestate or testamentary succession.

being in force, the rules herein contained shall constitute the law of British India applicable to all cases of intestate or testamentary succession.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

Number. Gender.

words importing the singular number include the plural: words importing the plural number include the singular; and words importing the male sex include females:

"Person."

"person" includes any company or association, or body of persons, whether incorporated or not:

"Year." "Month."

"year" and "month" respectively mean a year and month reckoned according to the British calendar:

"Immoveable property."

"immoveable property" includes land, incorporeal tenements and things attached to the earth, or permanently fastened to anything which is attached to the earth:

"Moveable property."

"moveable property" means property of every description except immoveable property:

"Province."

"province" includes any division of British India having a Court of the last resort:

"British India."

[1] "British India" means the territories which are or may become vested in Her Majesty or her successors by the [2] Statute 21 and 22 Vict., cap. 106. (*An Act for the better government of India*). [3] * * *

District Judge."

"District Judge" means the Judge of a principal Civil Court of original jurisdiction:

"Minor." "Minority."

[4] "minor" means any person who shall not have completed the age of eighteen years, and "minority" means the status of such person:

"Will."

"will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death:

Codicil."

"codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will:

"Probate."

"probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator:

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[1] *Cf.* General Clauses Act, 1897 (10 of 1897), s. 3 (7), Genl. Acts, Vol. IV.

[2] *See* "The Government of India Act, 1858" (21 & 22 Vict., c. 106), Coll. Stats. Ind., Vol. II.

[3] The words "other than the Settlement of Prince of Wales' Island, Singapore and Malacca" were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[4] For another definition of "minor," *see* the Indian Majority Act, 1875 (9 of 1875), s. 3, as amended by the Guardian and Wards Act, 1890 (8 of 1890), s. 52, Genl. Acts, Vol. II.

"executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided: "Executor."

"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor: "Administrator."

and, in every part of British India to which this Act shall extend, "Local Government" shall mean the person authorized by law to administer executive government in such part; and "Local Government."

"High Court" shall mean the highest Civil Court of appeal therein.[1] "High Court."

[1] * * * * * * * * * *.

4.[2] No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried. Interests and powers not acquired nor lost by marriage.

PART II.

OF DOMICILE.

5. Succession to the immoveable property in British India of a person deceased is regulated by the law of British India, wherever he may have had his domicile at the time of his death. Law regulating succession to deceased person's immoveable and moveable property, respectively.

Succession to the moveable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.

Illustrations.

(*a*) A, having his domicile in British India, dies in France, leaving moveable property in France, moveable property in England, and property, both moveable and immoveable, in British India. The succession to the whole is regulated by the law of British India.

(*b*) A, an Englishman, having his domicile in France, dies in British India, and leaves property, both moveable and immoveable, in British India. The succession to the moveable property is regulated by the rules which govern, in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immoveable property is regulated by the law of British India.

6. A person can only have one domicile for the purpose of succession to his moveable property. One domicile only affects succession to moveables.

7. The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled; Domicile of origin of person of legitimate birth.

[1] The words and figures "and, for the purposes of sections 242, 242A, 246A, and 277A, shall include the Court of the Recorder of Rangoon, in the definition of "High Court" which were added by the Probate and Administration Act, 1875 (13 of 1875), were repealed by the Lower Burma Courts Act, 1900 (6 of 1900), s. 48, Bur. Code.

[2] S. 4 does not apply to any marriage contracted before the 1st January, 1866, *see* s. 331, *infra*. The section "shall not apply, and shall be deemed never to have applied, to any marriage, one or both of the parties to which professed at the time of the marriage the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion," *see* the Married Woman's Property Act, 1874 (3 of 1874), s. 2, last paragraph, Genl. Acts, Vol. II.

or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.

Illustration.

At the time of the birth of A, his father was domiciled in England. A's domicile of origin is in England, whatever may be the country in which he was born.

Domicile of origin of illegitimate child.

8. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

Continuance of domicile of origin.

9. The domicile of origin prevails until a new domicile has been acquired.

Acquisition of new domicile.

10. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

Explanation.—A man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in Her Majesty's civil or military service, or in the exercise of any profession or calling.

Illustrations.

(*a*) A, whose domicile of origin is in England, proceeds to British India, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in British India.

(*b*) A, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service. A has acquired a domicile in Austria.

(*c*) A, whose domicile of origin is in France, comes to reside in British India under an engagement with the British Indian Government for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in British India.

(*d*) A, whose domicile is in England, goes to reside in British India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not by such residence acquire a domicile in British India, however long the residence may last.

(*e*) A, having gone to reside in British India under the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in British India. A has acquired a domicile in British India.

(*f*) A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not by such residence acquire a domicile in British India.

(*g*) A, having come to Calcutta under the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A has acquired a domicile in British India.

Special mode of acquiring domicile in British India.

11. Any person may acquire a domicile in British India by making and depositing in some office in British India (to be fixed by the Local Government)[1] a declaration in writing under his hand of his desire to

[1] For notifications issued under this section in the case of—
(1) Bombay, *see* Bom. R. & O., Vol. 1.
(2) Burma, *see* p. 10 of the Bur. R. M.
(3) Central Provinces, *see* Cent. Provs. R. & O.
(4) U. P. of Agra and Oudh, *see* U. P. List of R. & O., Vol. I.
(5) Punjab, *see* Punj. R. & O.
(6) N.-W. Frontier Province, *see* Gazette of India, 1901, Pt. II, p. 1304.

acquire such domicile: Provided that he shall have been resident in British India for one year immediately preceding the time of his making such declaration.

Domicile not acquired by residence as representative of foreign Government, or as part of his family.

12. A person who is appointed by the Government of one country to be its ambassador, consul or other representative in another country does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with him as part of his family or as a servant.

Continuance of new domicile.

13. A new domicile continues until the former domicile has been resumed, or another has been acquired.

Minor's domicile.

14. The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

Exception.—The domicile of a minor does not change with that of his parent, if the minor is married or holds any office or employment in the service of Her Majesty, or has set up, with the consent of the parent, in any distinct business.

Domicile acquired by woman on marriage.

15. By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

Wife's domicile during marriage.

16. The wife's domicile during the marriage follows the domicile of her husband.

Exception.—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

Minor's acquisition of new domicile.

17. Except in the cases above provided for, a person cannot during minority acquire a new domicile.

Lunatic's acquisition of new domicile.

18. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

Succession to moveable property in British India in absence of proof of domicile elsewhere.

19. If a man dies leaving moveable property in British India, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of British India.

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[1] PART III.

OF CONSANGUINITY.

Kindred or consanguinity.

20. Kindred or consanguinity is the connexion or relation of persons descended from the same stock or common ancestor.

Lineal consanguinity.

21. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a

[1] Pt. III does not apply to Parsís, *see* the Parsí Intestate Succession Act, 1865 (21 of 1865), s. 8, *infra*.

man and his father, grandfather and great-grandfather, and so upwards in the direct ascending line; or between a man, his son, grandson, great-grandson, and so downwards in the direct descending line.

Every generation constitutes a degree, either ascending or descending.

A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third.

Collateral consanguinity.

22. Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.

For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the common stock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

Persons held for purpose of succession to be similarly related to deceased.

23. For the purpose of succession, there is no distinction between those who are related to a person deceased through his father and those who are related to him through his mother;

nor between those who are related to him by the full blood, and those who are related to him by the half blood;

nor between those who were actually born in his lifetime, and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.

Mode of computing degrees of kindred.

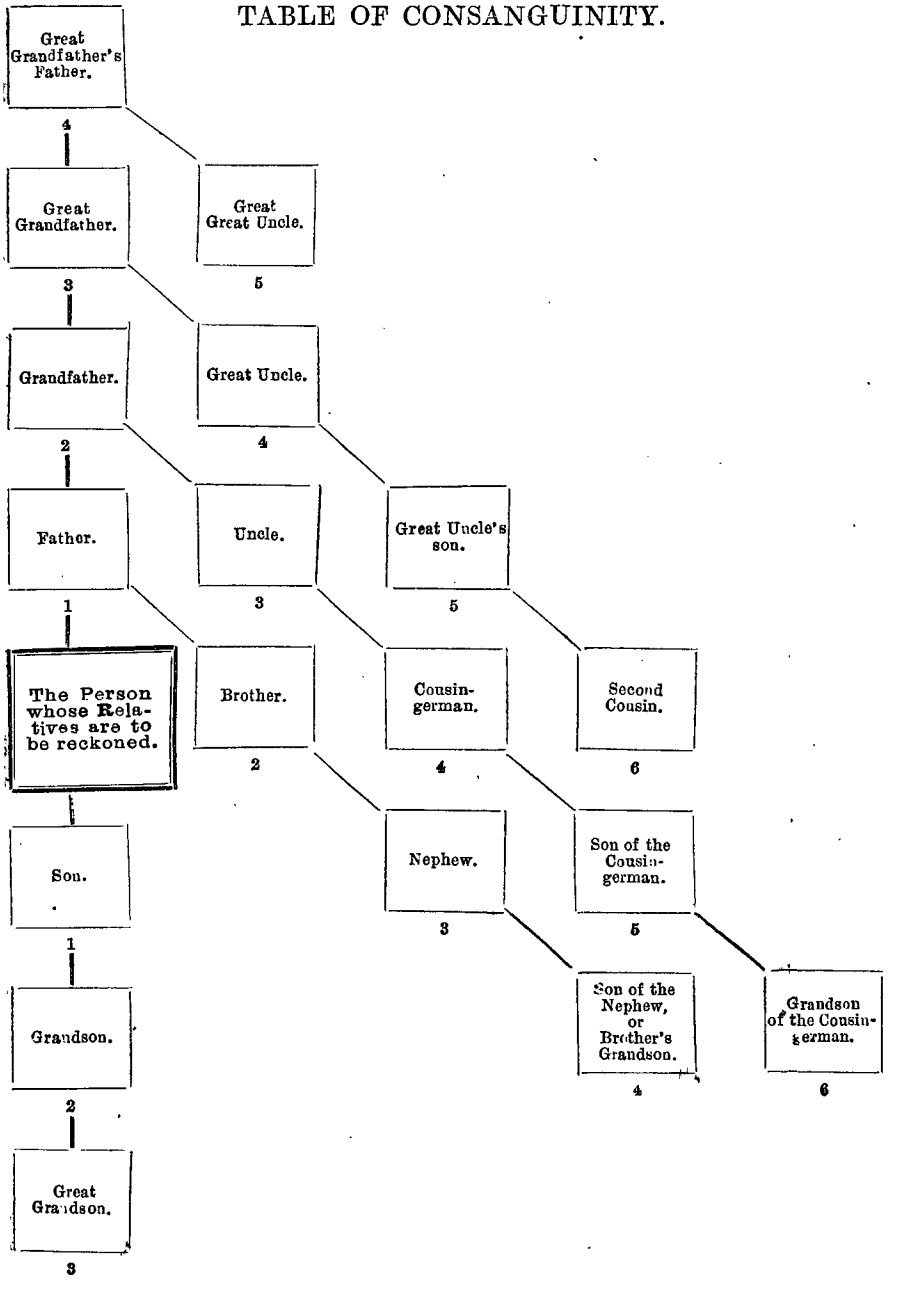
24. In the annexed table of kindred the degrees are computed as far as the sixth, and are marked by numeral figures.

The person whose relatives are to be reckoned, and his cousin-german, or, first cousin, are, as shown in the table, related in the fourth degree; there being one degree of ascent to the father, and another to the common ancestor, the grandfather; and from him one of descent to the uncle, and another to the cousin-german; making in all four degrees.

A grandson of the brother and a son of the uncle, *i.e.*, a great-nephew and a cousin-german, are in equal degree, being each four degrees removed.

A grandson of a cousin-german is in the same degree as the grandson of a great-uncle, for they are both in the sixth degree of kindred.

TABLE OF CONSANGUINITY.



PART IV.[1]

OF INTESTACY.

As to what property deceased considered to have died intestate.

25. A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

Illustrations.

(*a*) A has left no will. He has died intestate in respect of the whole of his property.

(*b*) A has left a will, whereby he has appointed B his executor; but the will contains no other provisions. A has died intestate in respect of the distribution of his property.

(*c*) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(*d*) A has bequeathed 1,000*l.* to B and 1,000*l.* to the eldest son of C, and has made no other bequest; and has died leaving the sum of 2,000*l.* and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of 1,000*l.*

Devolution of such property.

26. Such property devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules herein prescribed.

Explanation.—The widow is not entitled to the provision hereby made for her, if by a valid contract made before her marriage she has been excluded from her distributive share of her husband's estate.

Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.

27. Where the intestate has left a widow, if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules herein contained.

If he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are of kindred to him, in the order and according to the rules herein contained.

If he has left none who are of kindred to him, the whole of his property shall belong to his widow.

Where intestate has left no widow, and where he has left no kindred.

28. Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules herein contained: and, if he has left none who are of kindred to him, it shall go to the Crown.

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[1] Pt. IV (excepting s. 25) does not apply to Parsís, *see* the Parsí Intestate Succession Act, 1865 (21 of 1865), s. 8, *infra*.

PART V [1].

OF THE DISTRIBUTION OF AN INTESTATE'S PROPERTY.

(*a*) *Where he has left lineal Descendants.*

Rules of distribution.

29. The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants are as follows:—

Where intestate has left child or children only.

30. Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there be only one, or shall be equally divided among all his surviving children.

Where intestate has left no child, but grandchild or grandchildren.

31. Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren, and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild if there be only one, or shall be equally divided among all his surviving grandchildren.

Illustrations.

(*a*) A has three children, and no more; John, Mary and Henry. They all die before the father, John leaving two children, Mary three, and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild. Each of his grandchildren shall have one-ninth.

(*b*) But if Henry has died, leaving no child, then the whole is equally divided between the intestate's five grandchildren, the children of John and Mary.

(*c*) A has two children, and no more; John and Mary. John dies before his father, leaving his wife pregnant. Then A dies, leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and such posthumous child.

Where intestate has left only great-grandchildren or remoter lineal descendants.

32. In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.

Where intestate leaves lineal descendants not all in same degree of kindred to him, and those through whom the more remote descend are dead.

33. If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him; and

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[1] Pt. V does not apply to Parsís, *see* the Parsí Intestate Succession Act, 1865 (21 of 1865), s. 8, *infra*.

one of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and

one of such shares shall be allotted in respect of each of such deceased lineal descendants; and

the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

Illustrations.

(*a*) A had three children, John, Mary and Henry; John died, leaving four children, and Mary died, leaving one, and Henry alone survived the father. On the death of A, intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

(*b*) A left no child, but left eight grandchildren, and two children of a deceased grandchild. The property is divided into nine parts, one of which is allotted to each grandchild, and the remaining one-ninth is equally divided between the two great-grandchildren.

(*c*) A has three children, John, Mary and Henry. John dies leaving four children; and one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies intestate. One-third of his property is allotted to Henry, one-third to Mary's child, and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

(*b*) *Where the Intestate has left no lineal Descendants.*

Rules of distribution where intestate has left no lineal descendants.

34. Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) are as follows:—

Where intestate's father living.

35. If the intestate's father be living, he shall succeed to the property.

Where intestate's father dead, but his mother, brothers and sisters living.

36. If the intestate's father is dead, but the intestate's mother is living, and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

Illustration.

A dies intestate, survived by his mother and two brothers of the full blood, John and Henry, and a sister Mary, who is the daughter of his mother, but not of his father. The mother takes one-fourth, each brother takes one-fourth, and Mary, the sister of half blood, takes one-fourth.

Where intestate's father dead and his mother, a

37. If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister and the child or children of any brother or sister who may have died in the intestate's lifetime are also

living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

brother or sister, and children of any deceased brother or sister, living.

Illustrations.

A, the intestate, leaves his mother, his brothers John and Henry, and also one child of a deceased sister Mary, and two children of George, a deceased brother of the half blood who was the son of his father but not of his mother. The mother takes one-fifth, John and Henry each take one-fifth, the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth equally between them.

38. If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Where intestate's father dead and his mother and children of any deceased brother or sister living.

Illustration.

A, the intestate, leaves no brother or sister, but leaves his mother and one child of a deceased sister Mary, and two children of a deceased brother George. The mother takes one-third, the child of Mary takes one-third, and the children of George divide the remaining one-third equally between them.

39. If the intestate's father is dead, but the intestate's mother is living and there is neither brother, nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

Where intestate's father dead, but his mother living, and no brother, sister, nephew or niece.

40. Where the intestate has left neither lineal descendant, nor father, nor mother, the property is divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Where intestate has left neither lineal descendant, nor father, nor mother.

41. If the intestate left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

Where intestate has left neither lineal descendant, nor parent, nor brother, nor sister.

Illustrations.

(*a*) A, the intestate, has left a grandfather and a grandmother, and no other relative standing in the same or a nearer degree of kindred to him. They, being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.

(*b*) A, the intestate, has left a great-grandfather or great-grandmother, and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(*Part V.—Of the Distribution of an Intestate's Property. Part VI.—Of the Effect of Marriage and Marriage-settlements on Property. Part VII.—Of Wills and Codicils.*)

(*c*) A, the intestate, left a great-grandfather, an uncle and a nephew, but no relative standing in a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(*d*) Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They shall each take one-eleventh of the property.

Children's advancements not brought into hotchpot.

42. Where a distributive share in the property of a person who has died intestate shall be claimed by a child, or any descendant of a child, of such person, no money or other property which the intestate may during his life have paid, given or settled to, or for the advancement of the child by whom or by whose descendant the claim is made, shall be taken into account in estimating such distributive share.

PART VI.

OF THE EFFECT OF MARRIAGE AND MARRIAGE-SETTLEMENTS ON PROPERTY.

Rights of widower and widow respectively.

43.[1] The husband surviving his wife has the same rights in respect of her property, if she die intestate, as the widow has in respect of her husband's property if he die intestate.

Effect of marriage between person domiciled and one not domiciled in British India.

44. If a person whose domicile is not in British India marries in British India a person whose domicile is in British India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage.

Settlement of minor's property in contemplation of marriage.

45. The property of a minor may be settled in contemplation of marriage provided the settlement be made by the minor with the approbation of the minor's father, or, if he be dead or absent from British India, with the approbation of the High Court.

PART VII[2].

OF WILLS AND CODICILS.

Person capable of making wills.

46. Every person of sound mind and not a minor may dispose of his property by will.

[1] S. 43 does not apply to Parsís, *see* the Parsí Intestate Succession Act, 1865 (21 of 1865), s. 8, *infra*.

[2] Of Pt. VIII, ss. 46, 48 and 49 apply to the wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay, *see* the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

Explanation 1.—A married woman may dispose by will of any property which she could alienate by her own act during her life.[1]

Explanation 2.—Persons who are deaf or dumb or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3.—One who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation 4.—No person can make a will while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause that he does not know what he is doing.

Illustrations.

(*a*) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will. A cannot make a valid will.

(*b*) A executes an instrument purporting to be his will, but he does not understand the nature of the instrument nor the effect of its provisions. This instrument is not a valid will.

(*c*) A, being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes a will. This is a valid will.

Testamentary guardian.

47. A father, whatever his age may be, may by will appoint a guardian or guardians for his child during minority.

Will obtained by fraud, coercion or importunity.

48. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Illustrations.

(*a*) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a will in his, A's favour : such will has been obtained by fraud, and is invalid.

(*b*) A, by fraud and deception, prevails upon the testator to bequeath a legacy to him. The bequest is void.

(*c*) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

(*d*) A threatens to shoot B, or to burn his house, or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(*e*) A, being of sufficient intellect, if undisturbed by the influence of others, to make a will, yet being so much under the control of B that he is not a free agent, makes a will, dictated by B. It appears that he would not have executed the will but for fear of B. The will is invalid.

(*f*) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a will of a certain purport and does so merely to purchase peace and in submission to B. The will is invalid.

(*g*) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B.

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[1] As to property which a married woman may dispose of by her own act, *see* the Married Woman's Property Act, 1874 (3 of 1874), Genl. Acts, Vol. II and *cf.* s. 4 of this Act.

(*h*) A, with a view to obtaining a legacy from B, pays him attention and flatters him and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

Will may be revoked or altered.

49. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.

PART VIII [1].

Of the Execution of unprivileged Wills.

Execution of unprivileged wills.

50. Every testator, not being a soldier employed in an expedition, or engaged in actual warfare, or a mariner at sea, must execute his will according to the following rules:—

First.—The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

Second.—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

Third.—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

Incorporation of papers by reference.

51. If a testator, in a will or codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.

PART IX.

Of privileged Wills.

Privileged will.

52. Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at sea, may, if he has completed

[1] Pt. VIII applies to the wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay—*see* the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

the age of eighteen years, dispose of his property by a will made as is mentioned in the 53rd section. Such wills are called privileged wills.

Illustrations.

(*a*) A, the surgeon of a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.

(*b*) A is at sea in a merchant-ship, of which he is the purser. He is a mariner, and being at sea, can make a privileged will.

(*c*) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged will.

(*d*) A, a mariner of a ship, in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged will.

(*e*) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged will.

(*f*) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged will.

Mode of making, and rules for executing, privileged wills.

53. Privileged wills may be in writing, or may be made by word of mouth.

The execution of them shall be governed by the following rules :—

First.—The will may be written wholly by the testator, with his own hand. In such case it need not be signed nor attested.

Second.—It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

Third.—If the instrument purporting to be a will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his will, if it be shown that it was written by the testator's directions, or that he recognised it as his will.

If it appear on the face of the instrument that the execution of it in the manner intended by him was not completed, the instrument shall not by reason of that circumstance be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

Fourth.—If the soldier or mariner shall have written instructions for the preparation of his will, but shall have died before it could be prepared and executed, such instructions shall be considered to constitute his will.

Fifth.—If the soldier or mariner shall, in the presence of two witnesses, have given verbal instructions for the preparation of his will, and they shall have been reduced into writing in his lifetime, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.

Sixth.—Such soldier or mariner as aforesaid may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.

Seventh.—A will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privilged will.

PART X [1].

OF THE ATTESTATION, REVOCATION, ALTERATION AND REVIVAL OF WILLS.

Effect of gift to attesting witness.

54. A will shall not be considered as insufficiently attested by reason of any benefit thereby given, either by way of bequest or by way of appointment to any person attesting it, or to his or her wife or husband:

but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them.

Explanation.—A legatee under a will does not lose his legacy by attesting a codicil which confirms the will.

Witness not disqualified by interest or by being executor.

55. No person, by reason of interest in, or of his being an executor of, a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

Revocation of will by testator's marriage.

56. Every will shall be revoked by the marriage of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy.

Power of appointment defined.

Explanation.—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

Revocation of unprivileged will or codicil.

57. No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction, with the intention of revoking the same.

Illustrations.

(*a*) A has made an unprivileged will. Afterwards A makes another unprivileged will which purports to revoke the first. This is a revocation.

(*b*) A has made an unprivileged will. Afterwards, A, being entitled to make a privileged will, makes a privileged will which purports to revoke his unprivileged will. This is a revocation.

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[1] Of Pt. X, ss. 55 and 57 to 60 (both inclusive) apply to the wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay—*see* the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

(Part X.—Of the Attestation, Revocation, Alteration and Revival of Wills. Part XI.—Of the Construction of Wills.)

Effect of obliteration, interlineation or alteration in unprivileged will.

58. No obliteration, interlineation or other alteration made in any unprivileged will after the execution thereof shall have any effect except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

Revocation of privileged will or codicil.

59. A privileged will or codicil may be revoked by the testator by an unprivileged will or codicil, or by any act expressing an intention to revoke it and accompanied with such formalities as would be sufficient to give validity to a privileged will, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Explanation.—In order to the revocation of a privileged will or codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged will.

Revival of unprivileged will.

60. No unprivileged will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same;

Extent of revival of will or codicil partly revoked and afterwards wholly revoked.

and when any will or codicil, which shall be partly revoked and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

PART XI [1].

OF THE CONSTRUCTION OF WILLS.

Wording of will.

61. It is not necessary that any technical words or terms of art shall be used in a will, but only that the wording shall be such that the intentions of the testator can be known therefrom.

[1] Of Pt. XI, ss. 61 to 77 (both inclusive), 82, 83, 85 and 88 to 98 (both inclusive) apply to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay, *see* the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II. As to the application of ss. 62, 63, 92, 96 and 98 in the case of such wills, with reference to adoption, *see ib.*, s. 6.

Inquiries to determine questions as to object or subject of will.

62. For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a Court must inquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Illustrations.

(*a*) A, by his will, bequeaths 1,000 rupees to his eldest son or to his youngest grandchild, or to his cousin Mary. A Court may make inquiry in order to ascertain to what person the description in the will applies.

(*b*) A, by his will, leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest; that is to say, what estate of the testator's is called Black Acre.

(*c*) A, by his will, leaves to B "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

Misnomer or misdescription of object.

63. Where the words used in the will to designate or describe a legatee or a class of legatees sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

Illustrations.

(*a*) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(*b*) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(*c*) The testator bequeaths his property "to A and B, the legitimate children of C." C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

(*d*) The testator gives his residuary estate to be divided among "his seven children," and, proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

(*e*) The testator, having six grandchildren, makes a bequest to "his six grandchildren," and, proceeding to mention them by their Christian names, mentions one twice over omitting another altogether. The one whose name is not mentioned shall take a share with the others.

(*f*) The testator bequeaths "1,000 rupees to each of the three children of A." At the date of the will A has four children. Each of these four children shall, if he survives the testator, receive a legacy of 1,000 rupees.

When words may be supplied.

64. Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

Illustration.

The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees.

Rejection of erroneous particulars

65. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but

some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect. in description of subject.

Illustration.

(*a*) A bequeaths to B " his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, but had no marsh-lands in the occupation of X. The words " in the occupation of X " shall be rejected as erroneous, and the marsh-lands of the testator lying in L shall pass by the bequest.

(*b*) The testator bequeaths to A " his zamindari of Rampur." He had an estate at Rampur, but it was a taluq and not a zamindari. The taluq passes by this bequest.

66. If the will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply. When part of description may not be rejected as erroneous.

Explanation.—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under the 65th section are to be considered as struck out of the will.

Illustrations.

(*a*) A bequeaths to B " his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh-lands lying in L as were in the occupation of X.

(*b*) A bequeaths to B " his marsh-lands lying in L, and in the occupation of X, comprising 1,000 bighas of land" The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh-lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the will, and such of the testator's marsh-lands lying in L as were in the occupation of X shall alone pass by the bequest.

67. Where the words of the will are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended. Extrinsic evidence admissible in case of latent ambiguity.

Illustrations.

(*a*) A man, having two cousins of the name of Mary, bequeaths a sum of money to " his cousin Mary." It appears that there are two persons, each answering the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(*b*) A, by his will, leaves to B " his estate called Sultanpur Khurd." It turns out that he had two estates called Sultanpur Khurd. Evidence is admissible to show which estate was intended.

68. Where there is an ambiguity or deficiency on the face of the will no extrinsic evidence as to the intentions of the testator shall be admitted. Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.

Illustrations.

(*a*) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his will he bequeaths 1,000 rupees to "his aunt Caroline" and 1,000 rupees to "his cousin Mary," and afterwards bequeaths 2,000 rupees to "his before-mentioned aunt Mary." There is no person to whom the description given in the will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under the 76th section.

(*b*) A bequeaths 1,000 rupees to leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(*c*) A bequeaths to B rupees, or "his estate of ." Evidence is not admissible to show what sum or what estate the testator intended to insert.

Meaning of clause to be collected from entire will.

69. The meaning of any clause in a will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other; and for this purpose a codicil is to be considered as part of the will.

Illustrations.

(*a*) The testator gives to B a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B; it appearing from the bequest to B that the testator meant to use in a restricted sense the words in which he describes what he gives to A.

(*b*) Where a testator, having an estate one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his will bequeaths Black Acre to B: the latter bequest is to be read as an exception out of the first as if he had said "I give Black Acre to B, and all the rest of my estate to A."

When words may be understood in restricted sense, and when in sense wider than usual.

70. General words may be understood in a restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense.

Illustrations.

(*a*) A testator gives to A "his farm in the occupation of B," and to C "all his marsh-lands in L." Part of the farm in the occupation of B consists of marsh-lands in L, and the testator also has other marsh-lands in L. The general words, "all his marsh-lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh-lands in L.

(*b*) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons and chest of clothes, and to his friend A (a shipmate) his red box, clasp-knife and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(*c*) A, by his will, bequeathed to B all his household furniture, plate, linen, china, books, pictures and all other goods of whatever kind; and afterwards bequeathed to B a specified part of his property. Under the first bequest B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

Which of two possible constructions preferred.

71. Where a clause is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

No part rejected, if it can be reasonably construed.

72. No part of a will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

73. If the same words occur in different parts of the same will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary. Interpretation of words repeated in different parts of will.

74. The intention of the testator is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible. Testator's intention to be effectuated as far as possible.

Illustrations.

The testator by a will made on his death-bed bequeathed all his property to C D for life, and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under the 105th section, but it shall take effect so far as regards the gift to C. D.

75. Where two clauses or gifts in a will are irreconcileable, so that they cannot possibly stand together, the last shall prevail. The last of two inconsistent clauses prevails.

Illustrations.

(*a*) The testator by the first clause of his will leaves his estate of Ramnagar "to A," and by the last clause of his will leaves it "to B and not to A." B shall have it.

(*b*) If a man at the commencement of his will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition shall prevail.

76. A will or bequest not expressive of any definite intention is void for uncertainty. Will or bequest void for uncertainty.

Illustration.

If a testator says—"I bequeath goods to A;" or "I bequeath to A"; or "I leave to A all the goods mentioned in a schedule," and no schedule is found; or "I bequeath 'money,' 'wheat,' 'oil,'" or the like, without saying how much; this is void.

77. The description contained in a will of property the subject of gift shall, unless a contrary intention appear by the will, be deemed to refer to and comprise the property answering that description at the death of the testator. Words describing subject refer to property answering description at testator's death.

78. Unless a contrary intention shall appear by the will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power; Power of appointment executed by general bequest.

and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power.

79. Where property is bequeathed to or for the benefit of such of certain objects as a specified person shall appoint, or for the benefit of certain objects in such proportions as a specified person shall appoint, and the will does not provide for the event of no appointment being Implied gift to objects of power in default of appointment.

made; if the power given by the will be not exercised, the property belongs to all the objects of the power in equal shares.

Illustration.

(*a*) A, by his will, bequeaths a fund to his wife, for her life, and directs that at her death shall be divided among his children in such proportions as she shall appoint. The widow dies without having made any appointment. The fund shall be divided equally among the children.

Bequest to "heir," etc., of particular person without qualifying terms.

80. Where a bequest is made to the "heirs" or "right heirs," or "relations," or "nearest relations," or "family," or "kindred," or "nearest of kin," or "next-of-kin" of a particular person, without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.

Illustrations.

(*a*) A leaves his property "to his own nearest relations." The property goes to those who would be entitled to it if A had died intestate, leaving assets for the payment of his debts independently of such property.

(*b*) A bequeaths 10,000 rupees "to B for his life, and after the death of B to his own right heirs." The legacy after B's death belongs to those who would be entitled to it if it had formed part of A's unbequeathed property.

(*c*) A leaves his property to B but, if B dies before him, to B's next-of-kin: B dies before A; the property devolves as if it had belonged to B, and he had died intestate, leaving assets for the payment of his debts independently of such property.

(*d*) A leaves 10,000 rupees "to B for his life, and after his decease to the heirs of C." The legacy goes as if it had belonged to C, and he had died intestate, leaving assets for the payment of his debts independently of the legacy.

Bequest to "representatives," etc., of particular person.

81. Where a bequest is made to the "representatives," or "legal representatives," or "personal representatives," or "executors or administrators" of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person and he had died intestate in respect of it.

Illustration.

A bequest is made to the "legal representatives" of A. A has died intestate and insolvent. B is his administrator. B is entitled to receive the legacy, and shall apply it in the first place to the discharge of such part of A's debts as may remain unpaid: if there be any surplus, B shall pay it to those persons who at A's death would have been entitled to receive any property of A's which might remain after payment of his debts, or to the representatives of such persons.

Bequest without words of limitation.

82. Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him.

Bequest in alternative.

83. Where property is bequeathed to a person, with a bequest in the alternative to another person or to a class of persons; if a contrary intention does not appear by the will, the legatee first named shall be

entitled to the legacy if he be alive at the time when it takes effect; but if he be then dead the person or class of persons named in the second branch of the alternative shall take the legacy.

Illustrations.

(*a*) A bequest is made to A or to B. A survives the testator. B takes nothing.

(*b*) A bequest is made to A or to B. A dies after the date of the will, and before the testator. The legacy goes to B.

(*c*) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(*d*) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(*e*) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator the bequest to A's nearest of kin takes effect.

(*f*) Property is bequeathed to A for life, and after his death to B or his heirs. A and B survive the testator. B dies in A's lifetime. Upon A's death the bequest to the heirs of B takes effect.

(*g*) Property is bequeathed to A for life, and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death the bequest to the heirs of B takes effect.

Effect of words describing a class added to bequest to person.

84. Where property is bequeathed to a person, and words are added which describe a class of persons, but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the will.

Illustrations.

(*a*) A bequest is made—

to A and his children,
to A and his children by his present wife,
to A and his heirs,
to A and the heirs of his body,
to A and the heirs male of his body,
to A and the heirs female of his body,
to A and his issue,
to A and his family,
to A and his descendants,
to A and his representatives,
to A and his personal representatives,
to A, his executors and administrators,

in each of these cases, A takes the whole interest which the testator had in the property.

(*b*) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.

(*c*) A bequest is made to A for life, and after his death to his issue. At the death of A the property belongs in equal shares to all persons who shall then answer the description of issue of A.

Bequest to class of persons under general description only.

85. Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

Construction of terms.

86. The word "children" in a will applies only to lineal descendants in the first degree;

the word "grand-children" applies only to lineal descendants in the second degree of the person whose "children," or "grand-children," are spoken of;

the words "nephews" and "nieces" apply only to children of brothers or sisters;

the words "cousins," or "first cousins," or "cousins-german," apply only to children of brothers or of sisters of the father or mother of the person whose "cousins," or "first cousins," or "cousins-german," are spoken of;

the words "first cousins once removed" apply only to children of cousins-german, or to cousins-german of a parent of the person whose "first cousins once removed" are spoken of;

the words "second cousins" apply only to grand-children of brothers or of sisters of the grand-father or grand-mother of the person whose "second cousins" are spoken of;

the words "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of.

Words expressive of collateral relationship apply alike to relatives of full and of half-blood.

All words expressive of relationship apply to a child in the womb who is afterwards born alive.

Words expressing relationship denote only legitimate relatives, or failing such, relatives reputed legitimate.

87. In the absence of any intimation to the contrary in the will, the term "child," "son," or "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or, where there is no such legitimate relative, a person who has acquired, at the date of the will, the reputation of being such relative.

Illustrations.

(*a*) A, having three children, B, C and D, of whom B and C are legitimate, and D is illegitimate, leaves his property to be equally divided among "his children." The property belongs to B and C in equal shares, to the exclusion of D.

(*b*) A, having a niece of illegitimate birth, who has acquired the reputation of being his niece, and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

(*c*) A, having in his will enumerated his children, and named as one of them B, who is illegitimate, leaves a legacy to "his said children." B will take a share in the legacy along with the legitimate children.

(*d*) A leaves a legacy to "the children of B." B is dead, and has left none but illegitimate children. All those who had at the date of the will acquired the reputation of being the children of B are objects of the gift.

(*e*) A bequeathed a legacy to "the children of B." B never had any legitimate child. C and D had, at the date of the will, acquired the reputation of being children of B. After the date of the will and before the death of the testator, E and F were born, and acquired the reputation of being children of B. Only C and D are objects of the bequest.

(*f*) A makes a bequest in favour of his child by a certain woman, not his wife. B had acquired, at the date of the will, the reputation of being the child of A by the woman designated. B takes the legacy.

(*g*) A makes a bequest in favour of his child to be born of a woman, who never becomes his wife. The bequest is void.

(*h*) A makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is valid.

(*Part XI.—Of the Construction of Wills.*)

Rules of construction where will purports to make two bequests to same person

88. Where a will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first; if there is nothing in the will to show what he intended, the following rules shall prevail in determining the construction to be put upon the will:—

First.—If the same specific thing is bequeathed twice to the same legatee in the same will, or in the will and again in a codicil, he is entitled to receive that specific thing only.

Second.—Where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

Third.—Where two legacies, of unequal amount, are given to the same person in the same will, or in the same codicil, the legatee is entitled to both.

Fourth.—Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

Explanation.—In the four last rules, the word "will" does not include a codicil.

Illustrations.

(*a*) A, having ten shares, and no more, in the Bank of Bengal, made his will, which contains near its commencement the words "I bequeath my ten shares in the Bank of Bengal to B." After other bequests, the will concludes with the words "and I bequeath my ten shares in the Bank of Bengal to B." B is entitled simply to receive A's ten shares in the Bank of Bengal.

(*b*) A, having one diamond ring, which was given him by B, bequeathed to C the diamond ring which was given him by B. A afterwards made a codicil to his will, and thereby, after giving other legacies, he bequeathed to C the diamond ring which was given him by B. C can claim nothing except the diamond ring which was given to A by B.

(*c*) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, by the same will, repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(*d*) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, by the same will, bequeaths to B the sum of 6,000 rupees. B is entitled to 11,000 rupees.

(*e*) A, by his will, bequeaths to B 5,000 rupees and by a codicil to the will he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(*f*) A, by one codicil to his will, bequeaths to B 5,000 rupees, and by another codicil bequeaths to him 6,000 rupees. B is entitled to receive 11,000 rupees.

(*g*) A, by his will, bequeaths "500 rupees to B because she was his nurse," and in another part of the will bequeaths 500 rupees to B "because she went to England with his children." B is entitled to receive 1,000 rupees.

(*h*) A, by his will, bequeaths to B the sum of 5,000 rupees, and also, in another part of the will, an annuity of 400 rupees. B is entitled to both legacies.

(*i*) A, by his will, bequeaths to B the sum of 5,000 rupees, and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and takes a contingent interest in another sum of 5,000 rupees.

Constitution of residuary legatee.

89. A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property.

Illustrations.

(*a*) A makes her will, consisting of several testamentary papers, in one of which are contained the following words :—" I think there will be some thing left, after all funeral expenses, etc., to give to B, now at school, towards equipping him to any profession he may hereafter be appointed to." B is constituted residuary legatee.

(*b*) A makes his will, with the following passage at the end of it :—" I believe there will be found sufficient in my banker's hands to defray and discharge my debts, which I hereby desire B to do, and keep the residue for her own use and pleasure." B is constituted the residuary legatee.

(*c*) A bequeaths all his property to B, except certain stocks and funds, which he bequeaths to C. B is the residuary legatee.

Property to which residuary legatee entitled.

90. Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

Illustration.

A by his will bequeaths certain legacies, one of which is void under the 105th section, and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his will, A purchases a zamindari, which belongs to him at the time of his death. B is entitled to the two legacies and the zamindari as part of the residue.

Time of vesting of legacy in general terms.

91. If a legacy be given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and, if he dies without having received it, it shall pass to his representatives.

In what case legacy lapses.

92. If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the will that the testator intended that it should go to some other person.

In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations.

(*a*) The testator bequeaths to B " 500 rupees which B owes him." B dies before the testator : the legacy lapses.

(*b*) A bequest is made to A and his children. A dies before the testator, or happens to be dead when the will is made. The legacy to A and his children lapses.

(*c*) A legacy is given to A, and, in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(*d*) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator; B survives the testator. The bequest to B takes effect.

(*e*) A sum of money is bequeathed to A on his completing his eighteenth year, and, in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(*f*) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will lapse.

Legacy does not lapse if one of two joint legatees die before testator

93. If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.

Illustration.

The legacy is simply to A and B. A dies before the testator. B takes the legacy.

Effect of words showing testator's intention to give distinct shares.

94. But where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Illustration.

A sum of money is bequeathed to A, B and C, to be equally divided among them. A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

When lapsed share goes as undisposed of.

95. Where the share that lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of.

Illustration.

The testator bequeaths the residue of his estate to A, B and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.

96. Where a bequest shall have been made to any child or other lineal descendant of the testator, and the legatee shall die in the lifetime of the testator, but any lineal descendant of his shall survive the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Illustration.

A makes his will, by which he bequeaths a sum of money to his son B for his own absolute use and benefit. B does before A, leaving a son C who survives A, and having made his will whereby he bequeaths all his property to his widow D. The money goes to D.

Bequest to A for benefit of B does not lapse by A's death.

97. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the persons to whom the bequest is made.

Survivorship in case of bequest to described class.

98. Where a bequest is made simply to a described class of persons the thing bequeathed shall go only to such as shall be alive at the testator's death.

Exception.—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.

Illustrations.

(*a*) A bequeaths 1,000 rupees to "the children of B" without saying when it is to be distributed among them. B had died previous to the date of the will, leaving three

children, C, D and E. E died after the date of the will, but before the death of A. C and D survive A. The legacy shall belong to C and D, to the exclusion of the representatives of E.

(*b*) A bequeaths a legacy to the children of B. At the time of the testator's death, B has no children. The bequest is void.

(*c*) A lease for years of a house was bequeathed to A for his life, and after his decease to the children of B. At the death of the testator, B had two children living, C and D, and he never had any other child. Afterwards, during the lifetime of A, C died, leaving E his executor. D has survived A. D and E are jointly entitled to so much of the lease-hold term as remains unexpired.

(*d*) A sum of money was bequeathed to A for her life, and after her decease to the children of B. At the death of the testator, B had two children living, C and D, and, after that event, two children, E and F, were born to B. C and E died in the lifetime of A, C having made a will, E having made no will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E and one to F.

(*e*) A bequeaths one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life of B; D and E have survived B. One-third of A's lands belongs to D, E and the representatives of C, in equal shares.

(*f*) A bequeaths 1,000 rupees to B for life and after his death equally among the children of C. Up to the death of B, C had not had any child. The bequest after the death of B is void.

(*g*) A bequeaths 1,000 rupees to " all the children born or to be born " of B, to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the lifetime of C, two other children, F and G, are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F and G, to the exclusion of the after-born child of B.

(*h*) A bequeaths a fund to the children of B, to be divided among them when the eldest shall attain majority. At the testator's death, B had one child living, named C. He afterwards had two other children, named D and E. E died, but C and D were living when C attained majority. The fund belongs to C, D and the representatives of E, to the exclusion of any child who may be born to B after C's attaining majority.

PART XII [1].

OF VOID BEQUESTS.

Bequest to person by particular description, who is not in existence at testator's death.

99. Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

Exception.—If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest, or otherwise; and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or, if he be dead, to his representatives.

[1] Of Pt. XII, ss. 99 to 103 (both inclusive), apply to the wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay, *see* the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II. As to the application of ss. 99 to 103 in the case of such wills, with reference to adoption, *see ibid*, s. 6, as amended by the Probate and Administration Act, 1881 (5 of 1881), s. 154. *See* Genl. Act, Vol. III.

(*Part XII.—Of void Bequests.*)

Illustrations.

(*a*) A bequeaths 1,000 rupees to the eldest son of B. At the death of the testator, B has no son. The bequest is void.

(*b*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death the legacy goes to C's son.

(*c*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son; afterwards, during the life of B, a son, named D, is born to C. D dies, then B dies. The legacy goes to the representative of D.

(*d*) A bequeaths his estate of Greenacre to B for life, and at his decease to the eldest son of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(*e*) A bequeaths 1,000 rupees to the eldest son of C, to be paid to him after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entitled to the 1,000 rupees.

Bequest to person not in existence at testator's death, subject to prior bequest.

100. Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Illustrations.

(*a*) Property is bequeathed to A for his life, and after his death to his eldest son for life, and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(*b*) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters, some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(*c*) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that, if any of them marries under the age of eighteen, her portion shall be settled so that it may belong to herself for life, and may be divisible among her children after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect, in the case of each daughter who marries under eighteen, of substituting for the absolute bequest to her a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(*d*) A bequeaths a sum of money to B for life, and directs that upon the death of B the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest to persons not yet born, of a life-interest in the fund, that is to say, of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

Rule against perpetuity.

101. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

Illustrations.

(*a*) A fund is bequeathed to A for his life, and after his death to B for his life; and after B's death to such of the sons of B as shall first attain the age of 25. A and B survive

the testator. Here the son of B who shall first attain the age of 25 may be a son born after the death of the testator; such son may not attain 25 until more than 18 years have elapsed from the death of the longer liver of A and B; and the vesting of the fund may thus be delayed beyond the lifetime of A and B and the minority of the sons of B. The bequest after B's death is void.

(*b*) A fund is bequeathed to A for his life, and after his death to B for his life, and after B's death to such of B's sons as shall first attain the age of 25. B dies in the lifetime of the testator, leaving one or more sons. In this case the sons of B are persons living at the time of the testator's decease, and the time when either of them will attain 25 necessarily falls within his own lifetime. The bequest is valid.

(*c*) A fund is bequeathed to A for his life, and after his death to B for his life, with a direction that after B's death it shall be divided amongst such of B's children as shall attain the age of 18, but that, if no child of B shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B, a person living at the testator's decease. All the bequests are valid.

(*d*) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that, if any of them marry under age, her share of the fund shall be settled so as to devolve after her death upon such of her children as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at his decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughters whose share it was. All these provisions are valid.

Bequest to a class, some of whom may come under rules in sections 100 and 101.

102. If a bequest is made to a class of persons, with regard to some of whom it is inoperative by reason of the rules contained in the two last preceding sections, or either of them, such bequest shall be wholly void.

Illustrations.

(*a*) A fund is bequeathed to A for life, and after his death to all his children who shall attain the age of 25. A survives the testator, and has some children living at the testator's death. Each child of A's living at the testator's death must attain the age of 25 (if at all) within the limits allowed for a bequest. But A may have children after the testator's decease, some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A. The bequest to A's children, therefore, is inoperative as to any child born after the testator's death; and, as it is given to all his children as a class, it is not good as to any division of that class, but is wholly void.

(*b*) A fund is bequeathed to A for his life, and after his death to B, C, D and all other children of A who shall attain the age of 25. B, C, D are children of A living at the testator's decease. In all other respects the case is the same as that supposed in illustration (*a*). The mention of B, C and D by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void.

Bequest to take effect on failure of bequest void under section 100, 101 or 102.

103. Where a bequest is void by reason of any of the rules contained in the three last preceding sections, any bequest contained in the same will, and intended to take effect after or upon failure of such prior bequest, is also void.

Illustrations.

(*a*) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, for his life, and after the decease of such son to B. A and B survive the testator. The bequest to B is intended to take effect after the bequest to such of the sons of A as shall first attain the age of 25, which bequest is void under section 101. The bequest to B is void.

(*b*) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, and, if no son of A shall attain that age, to B. A and B survive the testator. The bequest to B is intended to take effect upon failure of the bequest to such of A's sons as shall first attain the age of 25, which bequest is void under section 101. The bequest to B is void.

(Part XII.—Of void Bequests.)

Effect of direction for accumulation.

104. A direction to accumulate the income arising from any property shall be void; and the property shall be disposed of as if no accumulation had been directed.

Exception.—Where the property is immoveable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death;

and at the end of the year such property and income shall be disposed of respectively, as if the period during which the accumulation has been directed to be made had elapsed.

Illustrations.

(*a*) The will directs that the sum of 10,000 rupees shall be invested in Government securities, and the income accumulated for 20 years, and that the principal, together with the accumulation, shall then be divided between A, B and C. A, B and C are entitled to receive the sum of 10,000 rupees at the end of the year from the testator's death.

(*b*) The will directs that 10,000 rupees shall be invested, and the income accumulated until A shall marry, and shall then be paid to him. A is entitled to receive 10,000 rupees at the end of a year from the testator's death.

(*c*) The will directs that the rents of the farm of Sultanpur shall be accumulated for ten years, and that the accumulation shall be then paid to the eldest son of A. At the death of the testator, A has an eldest son living, named B. B shall receive at the end of one year from the testator's death the rents which have accrued during the year, together with any interest which may have been made by investing them.

(*d*) The will directs that the rents of the farm of Sultanpur shall be accumulated for ten years, and that the accumulation shall then be paid to the eldest son of A. At the death of the testator, A has no son. The bequest is void.

(*e*) A bequeaths a sum of money to B, to be paid to him when he shall attain the age of 18, and directs the interest to be accumulated till he shall arrive at that age. At A's death the legacy becomes vested in B; and so much of the interest as is not required for his maintenance and education is accumulated, not by reason of the direction contained in the will, but in consequence of B's minority.

Bequest to religious or charitable uses.

105. No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons.

Illustrations.

A having a nephew makes a bequest by a will not executed nor deposited as required—

for the relief of poor people;
for the maintenance of sick soldiers;
for the erection or support of a hospital;
for the education and preferment of orphans;
for the support of scholars;
for the erection or support of a school;
for the building and repairs of a bridge;
for the making of roads;
for the erection or support of a church;
for the repairs of a church;
for the benefit of ministers of religion;
for the formation or support of a public garden.

All these bequests are void.

PART XIII [1].

OF THE VESTING OF LEGACIES.

Date of vesting of legacy when payment or possession postponed.

106. Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy.

And in such cases the legacy is from the testator's death said to be vested in interest.

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

Illustrations.

(*a*) A bequeaths to B 100 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B, and, if he dies before C, his representatives are entitled to the legacy.

(*b*) A bequeaths to B 100 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.

(*c*) A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.

(*d*) A fund is bequeathed to A until B attains the age of 18, and then to B. The legacy to B is vested in interest from the testator's death.

(*e*) A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

(*f*) A fund is bequeathed to A, B and C in equal shares, to be paid to them on their attaining the age of 18, respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vest in interest in A, B and C, subject to be devested in case A, B and C shall all die under 18, and, upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

Date of vesting when legacy contingent upon specified uncertain event.

107. A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens.

A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible.

In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

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[1] Pt. XIII applies to the wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay—*see* the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

(*Part XIII.—Of the Vesting of Legacies.*)

Exception.—Where a fund is bequeathed to any person upon his attaining a particular age, and the will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit, the bequest of the fund is not contingent.

Illustration.

(*a*) A legacy is bequeathed to D in case A, B and C shall all die under the age of 18. D has a contingent interest in the legacy until A, B and C all die under 18, or one of them attains that age.

(*b*) A sum of money is bequeathed to A "in case he shall attain the age of 18," or "when he shall attain the age of 18." A's interest in the legacy is contingent until the condition shall be fulfilled by his attaining that age.

(*c*) An estate is bequeathed to A for life, and after his death to B if B shall then be living; but if B shall not be then living, to C. A, B and C survive the testator. B and C each take a contingent interest in the estate until the event which is to vest it in one or in the other shall have happened.

(*d*) An estate is bequeathed as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A's death.

(*e*) A legacy is bequeathed to A when she shall attain the age of 18, or shall marry under that age with the consent of B, with a proviso that, if she shall not attain 18, or marry under that age with B's consent, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy although she may have married under 18 without the consent of B.

(*f*) An estate is bequeathed to A until he shall marry, and after that event to B. B's interest in the bequest is contingent until the condition shall be fulfilled by A's marrying.

(*g*) An estate is bequeathed to A until he shall take advantage of the Act for the Relief of Insolvent Debtors, and after that event to B. B's interest in the bequest is contingent until A takes advantage of the Act.

(*h*) An estate is bequeathed to A if he shall pay 500 rupees to B. A's interest in the bequest is contingent until he has paid 500 rupees to B.

(*i*) A leaves his farm of Sultanpur Khurd to B, if B shall convey his own farm of Sultanpur Buzurg to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(*j*) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent until the condition shall be fulfilled by the expiration of the five years without B's having married C, or by the occurrence within that period of an event which makes the fulfilment of the condition impossible.

(*k*) A fund is bequeathed to A if B shall not make any provision for him by will. The legacy is contingent until B's death.

(*l*) A bequeaths to B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(*m*) A bequeaths to B 500 rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

Vesting of interest in bequest to such members of a class as shall have attained particular age.

108. Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Illustration.

A fund is bequeathed to such of the children of A as shall attain the age of 18, with a direction that, while any child of A shall be under the age of 18, the income of the share, to which it may be presumed he will be eventually entitled, shall be applied for his maintenance and education. No child of A who is under the age of 18 has a vested interest in the bequest.

PART XIV [1].

OF ONEROUS BEQUESTS.

Onerous bequest.

109. Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.

Illustrations.

A, having shares in (X), a prosperous joint stock company, and also shares in (Y), a joint stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint stock companies. B refuses to accept the share in (Y). He forfeits the shares in (X).

One of two separate and independent bequests to same person may be accepted, and the other refused.

110. Where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

Illustration.

A, having a lease for a term of years of a house at a rent which he and his representative are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B refuses to accept the lease. He shall not by this refusal forfeit the money.

PART XV.[1]

OF CONTINGENT BEQUESTS.

Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.

111. Where a legacy is given if a specified uncertain event shall happen, and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect, unless such event happens before the period when the fund bequeathed is payable or distributable.

Illustrations.

(*a*) A legacy is bequeathed to A, and, in case of his death, to B. If A survives the testator, the legacy to B does not take effect.

(*b*) A legacy is bequeathed to A, and, in case of his death without children, to B. If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect.

(*c*) A legacy is bequeathed to A when and if he attains the age of 18, and, in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.

(*d*) A legacy is bequeathed to A for life, and, after his death, to B, and, "in case of B's death without children," to C. The words "in case of B's death without children" are to be understood as meaning in case B shall die without children during the lifetime of A.

(*e*) A legacy is bequeathed to A for life, and, after his death, to B, and, "in case of B's death," to C. The words "in case of B's death" are to be considered as meaning "in case B shall die in the lifetime of A."

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[1] Pts. XIV and XV apply to the wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay, *see* the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

(Part XV.—Of Contingent Bequests. Part XVI.—Of Conditional Bequests.)

112. Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the will.

Bequest to such of certain persons as shall be surviving at some period not specified.

Illustrations.

(*a*) Property is bequeathed to A and B, to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.

(*b*) Property is bequeathed to A for life, and, after his death, to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A; C survives A. At A's death the legacy goes to C.

(*c*) Property is bequeathed to A for life, and, after his death, to B and C, or the survivor, with a direction that, if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator; B survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.

(*d*) Property is bequeathed to A for life, and, after his death, to B and C, with a direction that, in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterwards C dies in the lifetime of A. The legacy goes to the representative of C.

PART XVI [1].

Of Conditional Bequests.

113. A bequest upon an impossible condition is void.

Bequest upon impossible condition.

Illustration.

(*a*) An estate is bequeathed to A on condition that he shall walk 100 miles in an hour. The bequest is void.

(*b*) A bequeaths 500 rupees to B on condition that he shall marry A's daughter. A's daughter was dead at the date of the will. The bequest is void.

114. A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void.

Bequest upon illegal or immoral condition.

Illustrations.

(*a*) A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

(*b*) A bequeaths 5,000 rupees to his niece if she will desert her husband. The bequest is void.

115. Where a will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Fulfilment of condition precedent to vesting of legacy.

Illustrations.

(*a*) A legacy is bequeathed to A on condition that he shall marry with the consent of

[1] Part XVI applies to the Wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay, *see* the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

B, C, D and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(*b*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. D dies. A marries with the consent of B and C. A has fulfilled the condition.

(*c*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries in the lifetime of B, C and D, with the consent of B and C only, A has not fulfilled the condition.

(*d*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A obtains the unconditional assent of B, C and D to his marriage with E. Afterwards B, C and D capriciously retract their consent. A marries E. A has fulfilled the condition.

(*e*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries without the consent of B, C and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(*f*) A makes his will, whereby he bequeaths a sum of money to B if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(*g*) A legacy is bequeathed to A if he executes a certain document within a time specified in the will. The document is executed by A within a reasonable time, but not within the time specified in the will. A has not performed the condition, and is not entitled to receive the legacy.

Bequest to A and, on failure of prior bequest, to B.

116. Where there is a bequest to one person and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

Illustrations.

(*a*) A bequeaths a sum of money to his own children surviving him, and, if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(*b*) A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A's death, and, if he should neglect to do so, to C. B dies in the testator's lifetime. The bequest to C takes effect.

When second bequest not to take effect on failure of first.

117. Where the will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect, unless the prior bequest fails in that particular manner.

Illustration.

A makes a bequest to his wife, but, in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The bequest to B does not take effect.

Bequest over, conditional upon happening or not happening of specified uncertain event.

118. A bequest may be made to any person with the condition superadded that in case a specified uncertain event shall happen the thing bequeathed shall go to another person, or that in case a specified uncertain event shall not happen the thing bequeathed shall go over to another person.

In each case the ulterior bequest is subject to the rules contained in sections 107, 108, 109, 110, 111, 112, 113, 114, 116 and 117.

Illustrations.

(*a*) A sum of money is bequeathed to A, to be paid to him at the age of 18, and, if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be devested and to go to B in case A shall die under 18.

(*b*) An estate is bequeathed to A with a proviso that if A shall dispute the competency of the testator to make a will the estate shall go to B. A disputes the competency of the testator to make a will. The estate goes to B.

(*c*) A sum of money is bequeathed to A for life, and, after his death, to B; but if B shall then be dead, leaving a son, such son is to stand in the place of B. B takes a vested interest in the legacy, subject to be devested if he dies leaving a son in A's lifetime.

(*d*) A sum of money is bequeathed to A and B, and if either should die during the life of C, then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money, and the representative of B takes the other half.

(*e*) A bequeaths to B the interest of a fund for life, and directs the fund to be divided at her death, equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

119. An ulterior bequest of the kind contemplated by the last preceding section cannot take effect, unless the condition is strictly fulfilled.

Condition must be strictly fulfilled.

Illustrations.

(*a*) A legacy is bequeathed to A with a proviso that, if he marries without the consent of B, C and D, the legacy shall go to E. D dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(*b*) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower and marries again without the consent of B. The bequest to C does not take effect.

(*c*) A legacy is bequeathed to A, to be paid at 18, or marriage, with a proviso that, if A dies under 18 or marries without the consent of B, the legacy shall go to C. A marries under 18, without the consent of B. The bequest to C takes effect.

120. If the ulterior bequest be not valid, the original bequest is not affected by it.

Original bequest not affected by invalidity of second.

Illustrations.

(*a*) An estate is bequeathed to A for his life, with a condition superadded that, if he shall not on a given day walk 100 miles in an hour, the estate shall go to B. The condition being void, A retains his estate as if no condition had been inserted in the will.

(*b*) An estate is bequeathed to A for her life, and, if she do not desert her husband, to B. A is entitled to the estate during her life as if no condition had been inserted in the will.

(*c*) An estate is bequeathed to A for life, and, if he marries, to the eldest son of B for life. B, at the date of the testator's death, had not had a son. The bequest over is void under section 92, and A is entitled to the estate during his life.

121. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Bequest conditioned that it shall cease to have effect in case specified uncertain event shall happen or not happen.

Illustrations.

(*a*) An estate is bequeathed to A for his life, with a proviso that, in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood. He loses his life-interest in the estate.

(Part XVI.—Of Conditional Bequests. Part XVII.—Of Bequests with Directions as to Application or Enjoyment.)

(*b*) An estate is bequeathed to A, provided that, if he marries under the age of 25 without the consent of the executors named in the will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(*c*) An estate is bequeathed to A, provided that, if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

(*d*) An estate is bequeathed to A, with a proviso that, if she becomes a nun, she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the will.

(*e*) A fund is bequeathed to A for life, and, after his death, to B, if B shall be then living, with a proviso that, if B shall become a nun, the bequest to her shall cease to have any effect. B becomes a nun in the lifetime of A. She thereby loses her contingent interest in the fund.

Such condition must not be invalid under section 107.

122. In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by the 107th section.

Result of legatee rendering impossible or indefinitely postponing act for which no time specified, and on non-performance of which subject-matter to go over.

123. Where a bequest is made with a condition superadded that, unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect, but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Illustrations.

(*a*) A bequest is made to A, with a proviso that, unless he enters the army, the legacy shall go over to B. A takes holy orders, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(*b*) A bequest is made to A, with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger and thereby indefinitely postpones the fulfilment of the condition. The bequest ceases to have effect.

Performance of condition, precedent or subsequent, within specified time. Further time in case of fraud.

124. Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the the subject matter of the bequest is to go over to another person, or the which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

PART XVII [1].

OF BEQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT.

Direction that fund be

125. Where a fund is bequeathed absolutely to or for the benefit of

[1] Pt. XVII applies to the wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay, *see* the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction.

Bequest for particular manner following absolute bequest of same to or for benefit of any person.

Illustration.

A sum of money is bequeathed towards purchasing a country residence for A, or to purchase an annuity for A, or to purchase a commission in the army for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

126. Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will had contained no such direction.

Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee.

Illustrations.

(*a*) A bequeaths the residue of his property to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life, and be paid to their children after their death. All the daughters die unmarried. The representatives of each daughter are entitled to her share of the residue.

(*b*) A directs his trustees to raise a sum of money for his daughter, and he then directs that they shall invest the fund, and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

127. Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

Bequest of fund for certain purposes, some of which cannot be fulfilled.

Illustrations.

(*a*) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and at his death shall divide the principal among his children. The son dies without having ever had a child. The fund, after the son's death, belongs to the estate of the testator.

(*b*) A bequeaths the residue of his estate, to be divided equally among his daughters with a direction that they are to have the interest only during their lives, and that at their decease the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

PART XVIII [1].

Of Bequests to an Executor.

128. If a legacy is bequeathed to a person who is named an executor of the will, he shall not take the legacy unless he proves the will or otherwise manifests an intention to act as executor.

Legatee named as executor cannot take unless he shows intention to act as executor.

[1] Pts. XVIII and XIX apply to the wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay, *see* the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

Illustration.

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the will, and dies a few days after the testator, without having proved the will. A has manifested an intention to act as executor.

PART XIX.[1]

OF SPECIFIC LEGACIES.

Specific legacy defined.

129. Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific.

Illustrations.

(*a*) A bequeaths to B—

"the diamond ring presented to him by C :"
"his gold chain :"
"a certain bale of wool :"
"a certain piece of cloth :"
"all his household goods which shall be in or about his dwelling-house in M^A^ Street, in Calcutta, at the time of his death :"
"the sum of 1,000 rupees in a certain chest :"
"the debt which B owes him :"
"all his bills, bonds and securities belonging to him lying in his lodgings in Calcutta :"
"all his furniture in his house in Calcutta :"
"all his goods on board a certain ship then lying in the river Hughli :"
"2,000 rupees which he has in the hands of C :"
"the money due to him on the bond of D :"
"his mortgage on the Rampur factory :"
"one-half of the money owing to him on his mortgage of Rampúr factory :"
"1,000 rupees, being part of a debt due to him from C :"
"his capital stock of 1,000*l.* in East India Stock :"
"his promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan :"
"all such sums of money as his executors may, after his death, receive in respect of the debt due to him from the insolvent firm of D and Company :"
"all the wine which he may have in his cellar at the time of his death :"
"such of his horses as B may select :"
"all his shares in the Bank of Bengal :"
"all the shares in the Bank of Bengal which he may possess at the time of his death :"
"all the money which he has in the 5½ per cent. loan of the Government of India :"
"all the Government securities he shall be entitled to at the time of his decease."

Each of these legacies is specific.

(*b*) A, having Government promissory notes for 10,000 rupees, bequeaths to his executors "Government promissory notes for 10,000 rupees in trust to sell" for the benefit of B. The legacy is specific.

(*c*) A, having property at Benares, and also in other places, bequeaths to B all his property at Benares. The legacy is specific.

[1] *See* foot-note on previous page.

(*d*) A bequeaths to B—

his house in Calcutta :
his zamíndárí of Rámpur :
his taluq of Rámnagar :
his lease of the indigo-factory of Salkya :
an annuity of 500 rupees out of the rents of his zamíndárí of W.
A directs his zamíndarí of X to be sold, and the proceeds to be invested for the benefit of B.

Each of these bequests is specific.

(*e*) A by his will charges his zamíndárí of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamíndárí to D. Each of these bequests is specific.

(*f*) A bequeaths a sum of money—

to buy a house in Calcutta for B :
to buy an estate in zila Faridpur for B :
to buy a diamond ring for B :
to buy a horse for B :
to be invested in shares in the Bank of Bengal for B :
to be invested in Government securities for B.

A bequeaths to B—

" a diamond ring :"
" a horse :"
" 10,000 rupees worth of Government securities :"
" an annuity of 500 rupees :"
" 2,000 rupees, to be paid in cash :"
" so much money as will produce 5,000 rupees 4 per cent. Government securities."

These bequests are not specific.

(*g*) A, having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of the property which he may leave in England. No one of these legacies is specific.

Bequest of sum certain where stocks, etc., in which invested are described.

130. Where a sum certain is bequeathed, the legacy is not specific merely because the stocks, funds or securities in which it is invested are described in the will.

Illustration.

A bequeaths to B—

" 10,000 rupees of his funded property :"
" 10,000 rupees of his property now invested in shares of the East Indian Railway Company :"
" 10,000 rupees, at present secured by mortgage of Rámpur factory."

No one of these legacies is specific.

Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.

131. Where a bequest is made in general terms, of a certain amount of any kind of stock, the legacy is not specific merely because the testator was, at the date of his will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Illustration.

A bequeaths to B 5,000 rupees five per cent. Government securities. A had at the date of the will five per cent. Government securities for 5,000 rupees. The legacy is not specific.

Bequest of money where not payable

132. A money legacy is not specific merely because the will directs its payment to be postponed until some part of the property of the

until part of testator's property disposed of in certain way.

testator shall have been reduced to a certain form, or remitted to a certain place.

Illustration.

A bequeaths to B 10,000 rupees and directs that this legacy shall be paid as soon as A's property in India shall be realized in England. The legacy is not specific.

When enumerated articles not deemed specifically bequeathed.

133. Where a will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.

Retention, in form, of specific bequest to several persons in succession.

134. Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.

Illustrations.

(*a*) A, having a lease of a house for a term of years, fifteen of which were unexpired at the time of his death, has bequeathed the lease to B for his life, and after B's death to C. B is to enjoy the property as A left it, although, if B lives for fifteen years, C can take nothing under the bequest.

(*b*) A, having an annuity during the life of B, bequeaths it to C for his life, and after C's death to D. C is to enjoy the annuity as A left, it, although, if B dies before D, D can take nothing under the bequest.

Sale and investment of proceeds of property bequeathed to two or more persons in succession.

135. Where property comprised in a bequest to two or more persons in succession is not specifically bequeathed, it shall, in the absence of any direction to the contrary, be sold, and the proceeds of the sale shall be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the will.

Illustration.

A, having a lease for a term of years, bequeaths " all his property " to B for life, and after B's death to C. The lease must be sold, and the proceeds invested as stated in the text, and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

136. If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

PART XX [1].

OF DEMONSTRATIVE LEGACIES.

Demonstrative legacy defined.

137. Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock

[1] Pt. XX applies to the wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay, *see* the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that

where specified property is given to the legatee, the legacy is specific;

where the legacy is directed to be paid out of specified property, it is demonstrative.

Illustrations.

(*a*) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific; the legacy to C is demonstrative.

(*b*) A bequeaths to B—

"ten bushels of the corn which shall grow in his field of Greenacre:"

"80 chests of the indigo which shall be made at his factory of Rampur:"

"10,000 rupees out of his five per cent. promissory notes of the Government of India:"

"an annuity of 500 rupees from his funded property:"

"1,000 rupees out of the sum of 2,000 rupees due to him by C."

A bequeaths to B an annuity, and directs it to be paid out of the rents arising from his taluk of Rámnagar.

A bequeaths to B—

"10,000 rupees, out of his estate at Rámnagar," or charges it on his estate at Rámnagar.

"10,000 rupees, being his share of the capital embarked in a certain business."

Each of these bequests is demonstrative.

Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

138. Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and, so far as the residue shall be deficient, out of the general assets of the testator.

Illustration.

A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The debt due to A from W is only 1,500 rupees; of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

PART XXI [1].

OF ADEMPTION OF LEGACIES.

Ademption explained.

139. If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into

[1] Pt. XXI applies to the wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay, *see* the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

property of a different kind, the legacy is adeemed; that is, it cannot take effect, by reason of the subject-matter having been withdrawn from the operation of the will.

Illustrations.

(*a*) A bequeaths to B—

"the diamond ring presented to him by C :"
"his gold chain :"
"a certain bale of wool :"
"a certain piece of cloth :"
"all his household goods which shall be in or about his dwelling-house in M Street in Calcutta, at the time of his death."

A in his lifetime,—

sells or gives away the ring :
converts the chain into a cup :
converts the wool into cloth :
makes the cloth into a garment :
takes another house into which he removes all his goods.

Each of these legacies is adeemed.

(*b*) A bequeaths to B—

"the sum of 1,000 rupees in a certain chest :"
"all the horses in his stable."

At the death of A, no money is found in the chest, and no horses in the stable. The legacies are adeemed.

(*c*) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned. The legacy is adeemed.

Non-ademption of demonstrative legacy.

140. A demonstrative legacy is not adeemed by reason that the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind; but it shall in such case be paid out of the general assets of the testator.

Ademption of specific bequest of right to receive something from third party.

141. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

Illustrations.

(*a*) A bequeaths to B—

"the debt which C owes him :"
"2,000 rupees which he has in the hands of D :"
"the money due to him on the bond of E :"
"his mortgage on the Rámpur factory."

All these debts are extinguished in A's lifetime, some with and some without his consent. All the legacies are adeemed.

(*b*) A bequeaths to B "his interest in certain policies of life assurance." A in his lifetime receives the amount of the policies. The legacy is adeemed.

Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.

142. The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received.

Illustration

A bequeaths to B "the debt due to him by C." The debt amounts to 10,000 rupees. C pays to A 5,000 rupees, the one-half of the debt. The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A.

(*Part XXI.—Of Ademption of Legacies.*)

Ademption *pro tanto* by testator's receipt of portion of entire fund of which portion has been specifically bequeathed.

143. If a portion of an entire fund or stock be specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Illustration.

A bequeaths to B one-half of the sum of 10,000 rupees due to him from W. A in his lifetime receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and, testator having received portion of that fund, remainder insufficient to pay both legacies.

144. Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee; if the testator receives a portion of that fund, and the remainder of the fund is sufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

Illustration.

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees, due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives 500 rupees, part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

Ademption where stock, specifically bequeathed, does not exist at testator's death.

145. Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.

Illustration.

A bequeaths to B—

"his capital stock of 1,000*l.* in East India Stock:"

"his promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan."

A sells the stock and the notes. The legacies are adeemed.

Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.

146. Where stock which has been specifically bequeathed does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Illustration.

A bequeaths to B "his 10,000 rupees in the 5½ per cent. loan of the Government of India." A sells one-half of his 10,000 rupees in the loan in question. One-half of the legacy is adeemed.

147. A specific bequest of goods under a description connecting them with a certain place is not adeemed by reason that they have been

of goods described as connected with certain place, by reason of removal.

removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

Illustrations.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." The goods are removed from the house to save them from fire. A dies before they are brought back.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

When removal of thing bequeathed does not constitute ademption.

148. The removal of the thing bequeathed from the place in which it is stated in the will to be situated does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

Illustrations.

A bequeaths to B all the bills, bonds and other securities for money belonging to him then lying in his lodgings in Calcutta. At the time of his death these effects had been removed from his lodgings in Calcutta.

A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only, which he removes with himself to each house. At the time of his death the furniture is in the house at Chinsurah.

A bequeaths to B all his goods on board a certain ship then lying in the river Hughli. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death.

No one of these legacies is revoked by ademption.

When thing bequeathed is a valuable to be received by testator from third person; and testator himself, or his representative, receives it.

149. Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which shall be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption;

but if he mixes it up with the general mass of his property, the legacy is adeemed.

Illustration.

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

Change by operation of law of subject of specific bequest between date of will and testator's death.

150. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Illustrations.

A bequeaths to B "all the money which he has in the 5½ per cent. loan of the Government of India." The securities for the 5½ per cent. loan are converted during A's lifetime into 5 per cent. stock.

(Part XXI.—Of Ademption of Legacies. Part XXII.—Of the Payment of Liabilities in respect of the Subject of a Bequest.)

A bequeaths to B the sum of 2,000*l.* invested in Consols in the names of trustees for A. The sum of 2,000*l.* is transferred by the trustees into A's own name.

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India which he has power under his marriage-settlement, to dispose of by will. Afterwards, in A's lifetime, the fund is converted into Consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.

Change of subject without testator's knowledge.

151. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Illustration.

A bequeaths to B "all his 3 per cent. Consols." The Consols are, without A's knowledge, sold by his agent, and the proceeds converted into East India Stock. This legacy is not adeemed.

Stock specifically bequeathed, lent to third party on condition that it be replaced.

152. Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.

Stock specifically bequeathed sold but replaced and belonging to testator at his death.

153. Where stock specifically bequeathed, is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.

PART XXII [1].

OF THE PAYMENT OF LIABILITIES IN RESPECT OF THE SUBJECT OF A BEQUEST.

Non-liability of executor to exonerate specific legatees.

154. Where property specifically bequeathed is subject at the death of the testator to any pledge, lien or incumbrance, created by the testator himself or by any person under whom he claims, then, unless a contrary intention appears by the will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance.

A contrary intention shall not be inferred from any direction which the will may contain for the payment of the testator's debts generally.

Explanation.—A periodical payment in the nature of land-revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.

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[1] Pt. XXII applies to the wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay, *see* the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

(Part XXII.—Of the Payment of Liabilities in respect of the Subject of a Bequest.)

Illustrations.

(*a*) A bequeaths to B the diamond ring given him by C. At A's death the ring is held in pawn by D, to whom it has been pledged by A. It is the duty of A's executors, if the state of the testator's assets will allow them, to allow B to redeem the ring.

(*b*) A bequeaths to B a zamindari which at A's death is subject to a mortgage for 10,000 rupees; and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A's death. B, if he accepts the bequest, accepts it subject to this charge, and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

Completion of testator's title to things bequeathed to be at cost of his estate.

155. Where any thing is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

Illustrations.

(*a*) A, having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths it to B, and dies before he has paid the purchase-money. The purchase-money must be made good out of A's assets.

(*b*) A, having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down, and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets.

Exoneration of legatee's immoveable property for which land-revenue or rent payable periodically.

156. Where there is a bequest of any interest in immoveable property in respect of which payment in the nature of land-revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the day of his death.

Illustration.

A bequeaths to B a house, in respect of which 365 rupees are payable annually, by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate shall make good 25 rupees in respect of the rent.

Exoneration of specific legatee's stock in Joint Stock Company.

157. In the absence of any direction in the will, where there is a specific bequest of stock in a Joint Stock Company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such call or payment shall, as between the testator's estate and the legatee, be borne by such estate;

but, if any call or other payment shall, after the testator's death, become due in respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee, if he accept the bequest.

Illustrations.

(*a*) A bequeathed to B his share in a certain railway. At A's death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s.* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(*b*) A has agreed to take 50 shares in an intended Joint Stock Company, and has contracted to pay up 5*l.* in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(*c*) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(*d*) A bequeaths to B his shares in a Joint Stock Company. B accepts the bequest. Afterwards the affairs of the Company are wound up, and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(*e*) A is the owner of ten shares in a Railway Company. At a meeting held during his lifetime a call is made of 3*l* per share, payable by three instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalments.

PART XXIII [1].

Of Bequests of Things described in General Terms.

Bequest of thing described in general terms.

158. If there be a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

Illustrations.

(*a*) A bequeaths to B a pair of carriage-horses, or a diamond ring. The executor must provide the legatee with such articles if the state of the assets will allow it.

(*b*) A bequeaths to B "his pair of carriage-horses." A had no carriage-horses at the time of his death. The legacy fails.

PART XIV [1].

Of Bequests of the Interest or Produce of a Fund.

Bequest of interest or produce of fund.

159. Where the interest or produce of a fund is bequeathed to any person, and the will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

Illustrations.

(*a*) A bequeaths to B the interest of his five per cent. promissory notes of the Government of India. There is no other clause in the will affecting those securities. B is entitled to A's five cent. promissory notes of the Government of India.

(*b*) A bequeaths the interest of his 5½ per cent. promissory notes of the Government of India to B for his life, and after his death to C. B is entitled to the interest of the notes during his life, and C is entitled to the notes upon B's death.

(*c*) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

[1] Pts. XXIII and XXIV apply to the wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay, *see* the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

PART XXV[1].

OF BEQUESTS OF ANNUITIES.

Annuity created by will payable for life only unless contrary intention appears by will.

160. Where an annuity is created by will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Illustrations.

(*a*) A bequeaths to B 500 rupees a year. B is entitled during his life to receive the annual sum of 500 rupees.

(*b*) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(*c*) A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity.

161. Where the will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person, on the testator's death the legacy vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him, or to receive the money appropriated for that purpose by the will.

Illustrations.

(*a*) A by his will directs that his executors shall, out of his property, purchase an annuity of 1,000 rupees for B. B is entitled at his option to have an annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

(*b*) A bequeaths a fund to B for his life, and directs that after B's death it shall be laid out in the purchase of an annuity for C. B and C survive the testator. C dies in B's lifetime. On B's death the fund belongs to the representative of C.

Abatement of annuity.

162. Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the will.

Where gift of annuity and residuary gift, whole annuity to be first satisfied.

163. Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

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[1] Pt. XXV applies to the wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay, *see* the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

PART XXVI [1].

OF LEGACIES TO CREDITORS AND PORTIONERS.

Creditor *primâ facie* entitled to legacy as well as debt.

164. Where a debtor bequeaths a legacy to his creditor, and it does not appear from the will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

Child *primâ facie* entitled to legacy as well as portion.

165. Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

Illustration.

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

No ademption by subsequent provision for legatee.

166. No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

Illustrations.

(*a*) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(*b*) A bequeaths 40,000 rupees to B, his orphan niece whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

PART XXVII [1].

OF ELECTION.

Circumstances in which election takes place.

167. Where a man, by his will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case he shall give up any benefits which may have been provided for him by the will.

Devolution of interest

168. The interest so relinquished shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to

[1] Pts. XXVI and XXVII apply to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay, *see* the Hindu Wills Acts, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

relinquished by owner.

the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

Testator's belief as to his ownership immaterial.

169. This rule will apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own.

Illustrations.

(*a*) The farm of Sultanpur was the property of C. A bequeathed it to B, giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultanpur, which is worth 800 rupees. C forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(*b*) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel, or to lose the estate.

(*c*) A bequeaths to B 1,000 rupees, and to C an estate which will, under a settlement, belong to B if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate, or to lose the legacy.

(*d*) A, a person of the age of 18 domiciled in British India, but owning real property in England, to which C is heir at law, bequeaths a legacy to C, and, subject thereto, devises and bequeaths to B "all his property whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the will. C may claim his legacy without giving up the real property in England.

Bequest for man's benefit how regarded for purpose of election.

170. A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Illustration.

The farm of Sultanpur Khurd being the property of B, A bequeathed it to C; and bequeathed another farm called Sultanpur Buzurg to his own executors with a direction that it should be sold, and the proceeds applied in payment of B's debts. B must elect whether he will abide by the will, or keep his farm of Sultanpur Khurd in opposition to it.

Person deriving benefit indirectly not put to election.

171. A person taking no benefit directly under the will, but deriving a benefit under it indirectly, is not put to his election.

Illustration.

The lands of Sultanpur are settled upon C for life, and after his death upon D, his only child. A bequeaths the lands of Sultanpur to B, and 1,000 rupees to C. C dies intestate shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the will. In that capacity he receives the legacy of 1,000 rupees and accounts to B for the rents of the lands of Sultanpur which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Sultanpur in opposition to the will.

Person taking in individual capacity under will may in other character elect to take in opposition.

172. A person who in his individual capacity takes a benefit under the will may in another character elect to take in opposition to the will.

Illustration.

The estate of Sultanpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultanpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultanpur in opposition to the will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the will.

Exception to the six last Rules.—Where a particular gift is expressed in the will to be in lieu of something belonging to the legatee which is also in terms disposed of by the will; if the legatee claims that thing, he

must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the will.

Illustration.

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultanpur during her life. A by his will bequeaths to his wife an annuity of 200*l.* during her life, in lieu of her interest in the estate of Sultanpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000*l.* The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000*l.*

When acceptance of benefit given by will constitutes election to take under will.

173. Acceptance of a benefit given by the will constitutes an election by the legatee to take under the will, if he has knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

Illustrations.

(*a*) A is owner of an estate called Sultanpur Khurd, and has a life-interest in another estate called Sultanpur Buzurg, to which upon his death, his son B will be absolutely entitled. The will of A gives the estate of Sultanpur Khurd to B, and the estate of Sultanpur Buzurg to C. B, in ignorance of his own right to the estate of Sultanpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultanpur Khurd. B has not confirmed the bequest of Sultanpur Buzurg to C.

(*b*) B, the eldest son of A, is the possessor of an estate called Sultanpur. A bequeaths Sultanpur to C, and to B the residue of A's property. B, having been informed by A's executors that the residue will amount to 5,000 rupees, allows C to take possession of Sultanpur. He afterwards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultanpur to C.

Presumption arising from enjoyment by legatee for two years.

174. Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent.

Confirmation of bequest by act of legatee.

175. Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

Illustration.

A bequeaths to B an estate to which C is entitled, and to C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the bequest of the estate to B.

When testator's representatives may call upon legatee to elect.

176. If the legatee shall not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the will, the representatives shall, upon the expiration of that period, require him to make his election;

Effect of non-compliance.

and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

Postponement of election in case of disability.

177. In case of disability the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

PART XXVIII.

Of Gifts in Contemplation of Death.

Property transferable by gift made in contemplation of death. When gift said to be made in contemplation of death. Such gift resumable. When it fails.

178. A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by will.

A gift is said to be made in contemplation of death where a man, who is ill and expects to die shortly of his illness, delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness.

Such a gift may be resumed by the giver.

It does not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.

Illustrations.

(*a*) A, being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death,—

a watch :
a bond granted by C to A :
a bank-note :
a promissory note of the Government of India endorsed in blank :
a bill of exchange endorsed in blank :
certain mortgage-deeds.

A dies of the illness during which he delivered these articles.
B is entitled to—

the watch :
the debt secured by C's bond :
the bank note :
the promissory note of the Government of India :
the bill of exchange :
the money secured by the mortgage-deeds.

(*b*) A, being ill and in expectation of death, delivers to B the key of a trunk or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents or to A's goods of bulk in the warehouse.

(*c*) A, being ill and in expectation of death, puts aside certain articles in separate parcels and marks upon the parcel respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

PART XXIX [1].

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

Character and property of executor or administrator as such.

179. The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

Administration with copy annexed of authenticated copy of will proved abroad.

180. When a will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of the Province whether in the British dominions or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate only to appointed executor.

181. Probate can be granted only to an executor appointed by the will.

Appointment, express or implied.

182. The appointment may be express or by necessary implication.

Illustrations.

(*a*) A wills that C be his executor if B will not; B is appointed executor by implication.

(*b*) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(*c*) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words :—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

183. Probate cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

Grant of probate to several executors simultaneously or at different times.

184. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment and C an executor of it by implication. Probate may be granted to A and C at the same time or to A first, and then to C or to C first and then to A.

Separate probate of

185. If a codicil be discovered after the granted probate, a separate

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[1] Of Pt. XXIX, s. 187 applies to the wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay, *see* the Hindu Wills Act, 1870 (21 of 1870), s. 2, as amended by the Probate and Administration Act, 1881 (5 of 1881), s. 154, Genl. Acts, Vol. III.

As to grants of letters of administration and probates to the Administrator General, *see* the Administrator General's Act, 1874 (2 of 1874), Genl. Acts, Vol. II. Nothing in Act 10 of 1865 is to be taken to supersede or affect the rights, duties and privileges of the Administrators General, *see ib.*, s. 66.

codicil discovered after grant of probate. Procedure when different executors appointed by codicil.

probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Accrual of representation to surviving executor.

186. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Right as executor or legatee when established.

187. No right as executor or legatee can be established in any Court of Justice, unless a Court of [1] competent jurisdiction [2][in British India] shall have granted probate of the will under which the right is claimed, or shall have granted letters of administration [3][with the will or with a copy of an authenticated copy of the will annexed].

Effect of probate.

188. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

To whom administration may not be granted.

189. Letters of administration cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

Right to intestate's property when established.

[4]**190.** No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.

Effect of letters of administration.

191. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Acts not validated by administration.

192. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Grant of administration where

193. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other

[1] So far as regards the Administrator General, the High Court at the Presidency-town is a Court of competent jurisdiction within the meaning of ss. 187, 190, wheresoever within the Presidency the property to be comprised in the probate or letters of administration may be situate—*see* the Administrator General's Act, 1874 (2 of 1874), s. 14. For prohibition of charges for commission by executors or administrators, other than the Administrator General, *see ib.*, s. 56. For Act 2 of 1874 *see* Genl. Acts, Vol. II.

[2] These words were substituted for the words "within the Province" by the Probate and Administration Act, 1903 (8 of 1903), Genl. Acts, Vol. II.

[3] The words in square brackets at the end of s. 187 were substituted for the words and figures "under the one-hundred and eightieth section" by the Probate and Administration Act, 1903 (8 of 1903), s. 2 (*1*), Genl. Acts, Vol. V.

[4] S. 190 does not apply to any part of the property of a Native Christian who has died intestate, *see* the Native Christian Administration of Estates Act, 1901 (7 of 1901), Genl. Acts, Vol. V.

person until a citation has been issued, calling upon the executor to accept or renounce his executorship; executor has not renounced.

except that, when one or more of several executors have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved. Exception.

194. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor. Form and effect of renunciation of executorship.

195. If the executor renounce, or fail to accept the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration, with a copy of the will annexed, may be granted to the person who would be entitled to administration in case of intestacy. Procedure where executor renounces or fails to accept within time limited.

196. When the deceased has made a will, but has not appointed an executor, or Grant of administration to universal or residuary legatee.

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will but before he has administered all the estate of the deceased;

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

197. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee. Right to administration of representative of deceased residuary legatee.

198. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly. Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

199. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next of kin to accept or refuse letters of administration. Citation before grant of administration to legatee other than universal or residuary.

200. When the deceased has died intestate, those who are connected Order in

which connections entitled to administer.

with him, either by marriage or by consanguinity, are entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated.

Administration to widow unless Court see cause to exclude her.

201. If the deceased has left a widow, administration shall be granted to the widow, unless the Court shall see cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.

Illustrations.

(*a*) The widow is a lunatic, or has committed adultery, or has been barred by her marriage-settlement of all interest in her husband's estate. There is cause for excluding her from the administration.

(*b*) The widow has married again since the decease of her husband. This is not good cause for her exclusion.

Association with widow in administration.

202. If the Judge think proper, he may associate any person or persons with the widow in the administration who would be entitled solely to the administration if there were no widow.

Administration where no widow or widow excluded.

203. If there be no widow, of if the Court see cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate:

Proviso.

Provided that, when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.

Title of kindred to administration.

204. Those who stand in equal degree of kindred to the deceased are equally entitled to administration.

Right of widower to administration of wife's estate.

205. The husband surviving his wife has the same right of administration of her estate as the widow has in respect of the estate of her husband.

Grant of administration to creditor.

206. When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration, and willing to act, they may be granted to a creditor.

Administration where property left in British India.

207. Where the deceased has left property in British India, letters of administration must be granted according to the foregoing rules, although he may have been a domiciled inhabitant of a country in which the law relating to testate and intestate succession differs from the law of British India.

PART XXX.

OF LIMITED GRANTS.

(*a*) *Grants limited in Duration.*

Probate of

208. When the will has been lost or mislaid since the testator's

death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft limited until the original or a properly authenticated copy of it be produced. copy or draft of lost will.

209. When the will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents if they can be established by evidence. Probate of contents of lost or destroyed will.

210. When the will is in the possession of a person residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced. Probate of copy where original exists.

211. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will, or an authenticated copy of it, be produced. Administration until will produced.

(*b*) *Grants for the Use and Benefit of others having Right.*

212. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration, with the will annexed, may be granted to the attorney of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself. Administration, with will annexed, to attorney of absent executor.

213. When any person to whom, if present, letters of administration, with the will annexed, might be granted, is absent from the Province, letters of administration, with the will annexed, may be granted to his attorney, limited as above mentioned. Administration, with will annexed, to attorney of absent person who, if present, would be entitled to administer.

214. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the attorney of the absent person, limited as before mentioned. Administration to attorney of absent person entitled to administer in case of intestacy.

215. When a minor is sole executor or sole residuary legatee, letters of administration, with the will annexed, may be granted to the legal guardian of such minor or to such other person as the Court shall think Administration during minority of sole exe-

cutor or residuary legatee.

fit until the minor shall have completed the age of eighteen years, at which period, and not before, probate of the will shall be granted to him.

Administration during minority of several executors or residuary legatees.

216. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have completed the age of eighteen years.

Administration for use and benefit of lunatic *jus habens.*

217. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, be a lunatic, letters of administration, with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the lunatic until he shall become of sound mind.

Administration *pendente lite.*

218. Pending any suit touching the validity of the will of a deceased person or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(*c*) *For Special Purposes.*

Probate limited to purpose specified in will.

219. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and, if he should appoint an attorney to take administration on his behalf, the letters of administration, with the will annexed, shall accordingly be limited.

Administration, with will annexed, limited to particular purpose.

220. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration limited to property in which person has beneficial interest.

221. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the person beneficially interested in the property, or to some other person on his behalf.

Administration limited to suit.

222. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the

purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to purpose of becoming party to suit to be brought against administrator.

223. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, it shall be lawful for such Court to grant, to any person whom it may think fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administration limited to collection and preservation of deceased's property.

224. In any case in which it may appear necessary for preserving the property of a deceased person, the Court, within whose district any of the property is situate, may grant to any person, whom such Court may think fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Appointment, as administrator, of person other than one who, under ordinary circumstances, would be entitled to administration.

225. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor shall, at the time of the death of such person, be resident out of the Province, and it shall appear to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who, under ordinary circumstances, would be entitled to a grant of administration, it shall be lawful for the Judge, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, to appoint such person as he shall think fit to be administrator,

and in every such case letters of administration may be limited or not as the Judge shall think fit.

(*d*) *Grants with Exception.*

Probate or administration, with will annexed, subject to exception.

226. Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

Administration with exception.

227. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(*e*) *Grants of the Rest.*

Probate or administration of rest.

228. Whenever a grant with exception, of probate, or letters of administration with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(*f*) *Grants of Effects unadministered.*

Grant of effects unadministered.

229. If the executor to whom probate has been granted have died, leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Rules as to grants of effects unadministered.

230. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Administration when limited grant expired and still some part of estate unadministered.

231. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

(*g*) *Alteration in Grants.*

What errors may be rectified by Court.

232. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure where codicil discovered after grant of administration with will annexed.

233. If after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

(*h*) *Revocation of Grants.*

Revocation or annulment for just cause.

"Just cause."

234. The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation.—Just cause is—

1st, that the proceedings to obtain the grant were defective in substance;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

4th, that the grant has become useless and inoperative through circumstances;

[1] [*5th*, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XXXIV of this Act or has exhibited under that Part an inventory or account which is untrue in a material respect.]

Illustrations.

(*a*) The Court by which the grant was made had no jurisdiction.

(*b*) The grant was made without citing parties who ought to have been cited.

(*c*) The will of which probate was obtained was forged or revoked.

(*d*) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(*e*) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(*f*) Since probate was granted, a later will has been discovered.

(*g*) Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.

(*h*) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

PART XXXI.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates, etc.

235. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

Power to appoint Delegate of District Judge to deal with non-contentious cases.

[2] **235A.** The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as [3] Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

Provided that, in the case of High Courts not established by Royal

[1] The fifth clause of the *Explanation* to s. 234 was added by the Indian Succession Law Amendment Act, 1889 (6 of 1889), s. 2, Genl. Acts, Vol. IV.

[2] S. 235A was added by the District Delegates Act, 1881 (6 of 1881), s. 2, Genl. Acts, Vol. III.

[3] For notification appointing such delegates in—
(1) Assam, *see* Assam R. & O.
(2) Madras, *see* Mad. R. & O., Vol. I.

Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

District Judge's powers as to grant of probate and administration.

236. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge may order person to produce testamentary papers.

237. The District Judge may order any person to produce and bring into Court any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same,

and such person shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the [1] Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default, XLV of 1860.

and the costs of the proceeding shall be in the discretion of the Judge.

Proceedings of District Judge's Court in relation to probate and administration.

238. The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.

When and how District Judge to interfere for protection of property.

239.[2] Until probate be granted of the will of a deceased person, or an administrator of his estate be constituted, the District Judge within whose jurisdiction any part of the property of the deceased person is situate, is authorized and required to interfere for the protection of such property at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk

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[1] *Supra.*

[2] As to the duty of the District Judge to take charge of property in certain cases and report to the Administrator General, and his power to pay certain expenses out of the property, *see* the Administrator General's Act, 1874 (2 of 1874), Genl. Acts, Vol. II.

This section (239) does not apply to any part of the property of a Native Christian who has died intestate, *see* the Native Christian Administration of Estates Act, 1901 (7 of 1901), Genl. Acts, Vol. V.

of loss or damage; and for that purpose, if he shall see fit, to appoint an officer to take and keep possession of the property.

When probate or administration may be granted by District Judge.

240. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it shall appear by a petition verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, at the time of his decease had a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

Disposal of application made to Judge of district in which deceased had no fixed abode.

241. When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, to grant them absolutely, or limited to the property within his own jurisdiction.

Probate and letters of administration may be granted by Delegate.

[1] **241A.** Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such Delegate.

Conclusiveness of probate or letters of administration.

242. Probate or letters of administration shall have effect over all the property and estate, moveable or immoveable, of the deceased, throughout the Province in which the same is [2] [or are] granted,

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him,

and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted:

[3] [Provided that probates and letters of administration granted—

(*a*) by a High Court, or

(*b*) by a District Judge, where the deceased at the time of his death had his fixed place of abode situate within the jurisdiction of such Judge, and such Judge certifies that the

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[1] S. 241A was added by the District Delegates Act, 1881 (6 of 1881), s. 3, Genl. Acts, Vol. III.

[2] The words "or are" were inserted by the Amending Act, 1891 (12 of 1891), Genl. Acts, Vol. IV.

[3] The present proviso to s. 242 was added by s. 2 (*2*) of the Probate and Administration Act, 1903 (8 of 1903), Genl. Acts, Vol. V.

S. 2 of Act 13 of 1875 by which the original proviso was added to s. 242 was repealed by Act 8 of 1903. That proviso was as follows:—

"Provided that probates and letters of administration granted by a High Court after the first day of April, 1875, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India."

value of the property and estate affected beyond the limits of the Province does not exceed ten thousand rupees,

shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.]

Transmission to High Courts of certificate of grants under proviso to section 242.

[1] **242A.** (*1*) Where probate or letters of administration has or have been granted by a High Court or District Judge with the effect referred to in the proviso to section 242, the High Court or District Judge shall send a certificate thereof to the following Courts, namely:—

(*a*) when the grant has been made by a High Court, to each of the other High Courts,

(*b*) when the grant has been made by a District Judge, to the High Court to which such District Judge is subordinate and to each of the other High Courts.

(*2*) Every certificate referred to in sub-section (*1*) shall be to the following effect, namely:—

"I, *A. B.*, Registrar [*or as the case may be*] of the High Court of Judicature at [*or as the case may be*], hereby certify that on the day of , the High Court of Judicature at [*or as the case may be*] granted probate of the will [*or* letters of administration of the estate] of *C. D.*, late of , deceased, to *E. F.* of and *G. H.* of , and that such probate [*or* letters] has [*or* have] effect over all the property of the deceased throughout the whole of British India;"

and such certificate shall be filed by the High Court receiving the same.

(*3*) Where any portion of the assets has been stated by the petitioner, as hereinafter provided in sections 244 and 246, to be situate within the jurisdiction of a District Judge in another Province, the Court required to send the certificate referred to in sub-section (*1*) shall send a copy thereof to such District Judge, and such copy shall be filed by the District Judge receiving the same.

Conclusiveness of application for probate or administration, if properly made and verified.

243. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration;

and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode or no property within the district

[1] S. 242A was inserted by s. 2 (*3*) of the Probate and Administration Act, 1903 (8 of 1903). S. 3 of Act 13 of 1875 by which the former section 242A was added to the Act was repealed by s. 4 of Act 8 of 1903, Genl. Acts, Vol. V.

at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Petition for probate.

244. Application for probate shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will annexed, and stating—

the time of the testator's death,

that the writing annexed is his last will and testament,

that it was duly executed,

[1] [the amount of assets which are likely to come to the petitioner's hands, and

that the petitioner is the executor named in the will;]

and in addition to these particulars, when the application is to the District Judge, the petition shall further state that the deceased at the time of his death had his fixed place of abode, or had some property, moveable or immoveable, situate within the jurisdiction of the Judge;

[2] [and, when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate.]

[3][Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount of such assets in each Province and the District Judges within whose jurisdiction such assets are situate.]

In what cases translation of will to be annexed to petition. Verification of translation by person other than Court translator.

245. In cases wherein the will is written in any language other than English or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or, if the will be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner—

"I (*A. B.*) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

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[1] These clauses in s. 244 were substituted for the words " and that the petitioner is the executor therein named," by the Indian Succession Law Amendment Act, 1889 (6 of 1889), s. 3, Genl. Acts, Vol. IV.

[2] This paragraph was added to s. 244 by the District Delegates Act, 1881 (6 of 1881), s. 4, Genl. Acts, Vol. III.

[3] The last paragraph was added to s. 244 by s. 2 (*4*) of the Probate and Administration Act, 1903 (8 of 1903), Genl. Acts, Vol. V.

(Part XXXI.—Of the Practice in granting and revoking Probates and Letters of Administration.)

Petition for letters of administration.

246. Applications for letters of administration shall be made by petition distinctly written as aforesaid and [1] stating—

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

that the deceased left some property within the jurisdiction of the District Judge [2] [or District Delegate] to whom the application is made, and

the amount of assets which are likely to come to the petitioner's hands,

[3] [and, when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate.]

[4] [Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount of such assets in each Province and the District Judges within whose jurisdiction such assets are situate.]

Addition to statement in petition, etc., probate or letters of administration in certain cases.

[5] **246A.** *(1)* Every person applying to any of the Courts mentioned in the proviso to section 242 for probate of a will or letters of administration of an estate intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by section 244 and section 246 of this Act, that to the best of his belief no application has been made to any other Court for a probate of the same

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[1] As to the particulars to be stated where the Administrator General applies for letters of administration, *see* the Administrator General's Act, 1874 (2 of 1874), s. 16, Genl. Acts, Vol. II.

[2] These words in s. 246 were inserted by the District Delegates Act, 1881 (6 of 1881), s. 9, Genl. Acts, Vol. III.

[3] These words in s. 246 were added by the District Delegates Act, 1881 (6 of 1881), s. 4, Genl. Acts, Vol. III.

[4] The last paragraph was added to section 246 by the Probate and Administration Act, 1903 (8 of 1903), Genl. Acts, Vol. V.

[5] The present section 246A was inserted by the Probate and Administration Act, 1903 (8 of 1903), Genl. Acts, Vol. V. S. 4 of Act 13 of 1875 by which the original section 246A was added to the Act was repealed by s. 4 of Act 8 of 1903.

The original section so added was as follows :—

" Every person applying to a High Court for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by section 244 and section 246 of this Act, that to the best of his belief no application has been made to any other High Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the High Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the High Court to which any application is made under the proviso to section 242 of this Act may, if it think fit, reject the same."

will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made and the proceedings (if any) had thereon.

(*2*) The Court to which any such application is made under the proviso to section 242, may, if it thinks fit, reject the same.

Petition for probate or administration to be signed and verified.

247. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect:—

"I (*A. B.*), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

Verification of petition for probate, by one witness to will.

248. Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the will (when procurable) in the manner or to the effect following:—

"I (*C. D.*), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or* mark) thereto (*as the case may be*) (*or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

Punishment for false averment in petition or declaration.

249. If any petition or declaration which is hereby required to be verified shall contain any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law [1] for the time being in force for the punishment of giving or fabricating false evidence.

District Judge may examine petitioner in person,

require further evidence,

and issue citations to inspect proceedings.

250. In all cases it shall be lawful for the District Judge [2] [or District Delegate,] if he shall think proper,

to examine the petitioner in person, upon oath or solemn affirmation, and also

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

Publication of citation.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the district and otherwise published or made known in such manner as the Judge [2] [or District Delegate] issuing the same may direct.

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[1] *See* the Indian Penal Code (Act 45 of 1860), Ch. XI. *Supra.*

[2] The words in square brackets in s. 250 were inserted by the District Delegates Act, 1881 (6 of 1881), s. 9, Genl. Acts, Vol. III.

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[1] [Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another Province, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself and shall certify such publication to the District Judge who issued the citation.]

Caveats against grant of probate or administration.

[2] **251.** Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate;

and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge;

and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

252. The caveat shall be to the following effect:—

"Let nothing be done in the matter of the estate of *A. B.*, late of , deceased, who died on the day of at without notice to *C. D.* of ."

After entry of caveat, no proceeding taken on petition until after notice to caveator.

253. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge [3] [or officer] to whom the application has been made [3] [or notice has been given of its entry with some other Delegate,] until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

District Delegate when not to grant probate or administration.

[4] **253A.** A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By "contention" is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

Power to transmit statement to District

[4] **253B.** In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question

[1] The last paragraph of s. 250 was added by s. 2 (*6*) of the Probate and Administration Act, 1903 (8 of 1903), Genl. Acts, Vol. V.

[2] Section 251 was substituted by the District Delegates Act, 1881 (6 of 1881), s. 5, Genl. Acts, Vol. III.

[3] The words in square brackets in s. 253 were inserted by the District Delegates Act, 1881 (6 of 1881), s. 6, Genl. Acts, Vol. III.

[4] Ss. 253A and 253B were added by the District Delegates Act, 1881 (6 of 1881), s. 7, Genl. Acts, Vol. III.

arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Judge in doubtful cases where no contention.

253C. [1] In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of Justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

254. When it shall appear to the Judge [2] [or District Delegate] that probate of a will should be granted, he will grant the same under the seal of his Court in manner following:—

Grant of probate to be under seal of Court.

Form of such grant.

"I, , Judge of the District of , [3] [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction,*)] hereby make known that on the day of in the year , the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will was granted to , the executor in the said will named, [4] [he having undertaken to administer the same, and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within

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[1] S. 253C was added by the District Delegates Act, 1881 (6 of 1881), s. 7, Genl. Acts, Vol. III.

[2] The words in s. 254 were inserted by ss. 9 and 8 respectively of the District Delegates Act, 1881 (6 of 1881), Genl. Acts, Vol. III.

[3] The words from " he having " to the end of s. 254 were substituted by the Indian Succession Law Amendment Act, 1889 (6 of 1889), s. 4, Genl. Acts, Vol. IV. The original words were as follows :—

" he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of a year next ensuing, and also to render a true account thereof."

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one year from the same date or within such further time as the Court may from time to time appoint].

Grant of letters of administration to be under seal of Court.

255. And wherever it shall appear to the District Judge [1][or District Delegate] that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he will grant the same under the seal of his Court in manner following:—

Form of such grant.

"I, , Judge of the District of [1] [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)], hereby make known that on the day of letters of administration (with *or* without the will annexed, *as the case may be*), of the property and credits of , late of deceased, were granted to , the father (*or as the case may be*) of the deceased, [2] [he having undertaken to administer the same, and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint].

Administration-bond.

256. [3] [Every person to whom any grant of letters of administration [other than a grant under section 212] is committed] shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge shall from time to time by any general or special order direct.

Assignment of administration-bond.

257. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept,

and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit,

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[1] The words in square brackets in s. 255 were inserted by ss. 9 and 8 respectively of the District Delegates Act, 1881 (6 of 1881), Genl. Acts, Vol. III.

[2] These words in s. 255 were substituted by the Indian Succession Law Amendment Act, 1889 (6 of 1889), s. 5, Genl. Acts, Vol. IV. The original words were as follows :—

" he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of one year next ensuing, and also to render a true account thereof."

[3] The words " Every person to whom any grant of letters of administration is committed " in s. 256 were substituted for the words " Every person to whom any grant of administration shall be committed " by the Indian Succession Law Amendment Act, 1889 (6 of 1889), s. 6, Genl. Acts, Vol. IV.

[4] The words and figures " other than a grant under section 212 " in the words so substituted in s. 256 were inserted by s. 9 of the Administrator General and Official Trustees Act, 1902 (5 of 1902), Genl. Acts, Vol. V.

assign the same to some person, his executors or administrators,

who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Time for grant of probate and administration.

258. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

Filing of original wills of which probate or administration with will annexed granted.

259. Every District Judge [1] [or District Delegate] shall file and preserve all original wills, of which probate or letters of administration with the will annexed may be granted by him, among the records of his Court, until some public registry for wills is established;

and the Local Government shall make [2] regulations for the preservation and inspection of the wills so filed as aforesaid.

Grantee of probate or administration alone to sue, etc., until same revoked.

260. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

Procedure in contentious cases.

261. In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Payment to executor or administrator before probate or administration revoked.

Right of such executor or administrator to recoup himself.

262. Where any probate is or letters of administration are revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in

[1] These words in square brackets in s. 259 were inserted by the District Delegates Act, 1881 (6 of 1881), s. 9, Genl. Acts, Vol. III.

[2] For rules in force in—

(1) Assam, *see* Assam R. & O.,
(2) Burma, *see* Bur. R. M.,
(3) Bengal including Eastern Bengal, *see* Ben. Local Stat. R. & O., Vol. I,
(4) Madras, *see* Mad. R. & O., Vol. I, Pt. II,
(5) Punjab, *see* Punj. List of R. & O., and
(6) United Provinces, *see* U. P. List of R. & O., Vol. I.

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respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Appeals from orders of District Judge.

263. Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

Concurrent jurisdiction of High Court.

264. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

PART XXXII.

Of Executors of their own Wrong.

Executor of his own wrong.

265. A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.

Exceptions.—First.—Intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong.

Second.—Dealing in the ordinary course of business with goods of the deceased received from another does not make an executor of his own wrong.

Illustrations.

(*a*) A uses or gives away or sells some of the goods of the deceased, or takes them to satisfy his own debt or legacy, or receives payment of the debts of the deceased. He is an executor of his own wrong.

(*b*) A having been appointed agent by the deceased agent in his lifetime to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased.

(*c*) A sues as executor of the deceased, not being such. He is an executor of his own wrong.

Liability of executor of his own wrong.

266. When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands, after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.

PART XXXIII.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

In respect of causes of action surviving deceased, and rents due at death.

267. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and to distrain for all rents due to him at the time of his death, as the deceased had when living.

Demands and rights of action of or against deceased survive to and against executor or administrator.

268. All demands whatsoever and all rights to prosecute or defend any action or special proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the [1] Indian Penal Code or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.

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Illustrations.

(*a*) A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(*b*) A sues for divorce. A dies. The cause of action does not survive to his representative.

Power of executor or administrator to dispose of property.

269. An executor or administrator has power to dispose of the property of the deceased, either wholly or in part, in such manner as he may think fit.

Illustrations.

(*a*) The deceased has made a specific bequest of part of his property. The executor not having assented to the bequest, sells the subject of it. The sale is valid.

(*b*) The executor in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased. The mortgage is valid.

Purchase by executor or administrator of deceased's property.

270. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Powers of several executors or administrators exerciseable by one.

271. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(*a*) One of several executors has power to release a debt due to the deceased.

(*b*) One has power to surrender a lease.

(*c*) One has power to sell the property of the deceased moveable or immoveable.

(*d*) One has power to assent to a legacy.

(*e*) One has power to endorse a promissory note payable to the deceased.

(*f*) The will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

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[1] *Supra.*

(*Part XXXIII.—Of the Powers of an Executor or Administrator.*
Part XXXIV.—Of the Duties of an Executor or Administrator.)

Survival of powers on death of one of several executors or administrators.

272. Upon the death of one or more of several executors or administrators all the powers of the office become vested in the survivors or survivor.

Powers of administrator of effect unadministered.

273. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator during minority.

274. An administrator during minority has all the powers of an ordinary administrator.

Powers of married executrix or administratrix.

275. When probate or letters of administration have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

PART XXXIV.

Of the Duties of an Executor or Administrator.

As to deceased's funeral.

276. It is the duty of an executor to perform the funeral of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

Inventory and account.

[1] **277.** (*1*) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character,

and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

(*2*) The High Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

(*3*) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits

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[1] This section was substituted by the Indian Succession Law Amendment Act, 1889 (6 of 1889), s. 7, Genl. Acts, Vol. IV.

to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code [1].

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(*4*) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code [1].

Inventory to include property in any part of British India in certain cases.

[2] **277A.** In all cases where a grant has been made of probate or letters of administration intended to have effect throughout the whole of British India, the executor or administrator shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India, and the value of such property situate in each Province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

As to property of, and debts owing to, deceased.

278. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

Expenses to be paid before all debts.

279. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid next after such expenses.

280. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Wages for certain services to be next paid, and then other debts.

281. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased.

Save as aforesaid, all debts to be paid equally and rateably.

282. Save as aforesaid, no creditor is to have a right of priority over another, by reason that his debt is secured by an instrument under seal, or on any other account.

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[1] *Supra.*

[2] The present section 277A was inserted by s. 2 (7) of the Probate and Administration Act, 1903 (8 of 1903), Genl. Acts, Vol. V. S. 5 of Act 13 of 1875 by which the original s. 277A was added to the Act was repealed by s. 4 of Act 8 of 1903. The original s. 277A as amended by the Indian Succession Law Amendment Act, 1889 (6 of 1889), s. 8, was as follows :—

"In all cases where a grant has been made of probate or letters of administration intended to have effect throughout the whole of British India, the executor "or" administrator to the effects of any person dying in British India and leaving property in more than one Province shall include in the inventory of the effects of the deceased his moveable or immoveable property situate in each of the Provinces;

"and the value of such property situate in the said Provinces, respectively, shall be separately stated in such inventory;

"and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India."

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably as far as the assets of the deceased will extend.

Application of moveable property to payment of debts where domicile not in British India.

283. If the domicile of the deceased was not in British India, the application of his moveable property to the payment of his debts is to be regulated by the law of [1] [British India].

[2] * * * * * * *

Creditor paid in part under section 283 to bring payment into account before sharing in proceeds of immoveable property.

284. No creditor who has received payment of a part of his debt by virtue of the last preceding section shall be entitled to share in the proceeds of the immoveable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 5,000 rupees, and immoveable property to the value of 10,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The creditors holding instruments under seal receive half of their debts out of the proceeds of the moveable estate. The proceeds of the immoveable estate are to be applied in payment of the debts on instruments not under seal until one-half of such debts has been discharged. This will leave 5,000 rupees, which are to be distributed rateably amongst all the creditors without distinction, in proportion to the amount which may remain due to them.

Debts to be paid before legacies.

285. Debts of every description must be paid before any legacy.

Executor or administrator not bound to pay legacies without indemnity.

286. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Abatement of general legacies.

287. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions,

Executor not to pay one legatee in preference to another.

and the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Non-abatement of specific legacy when assets sufficient to pay debts.

288. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

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[1] The words " British India " in s. 283 were substituted for the words " the country in which he was domiciled," by the Indian Succession Law Amendment Act, 1889 (6 of 1889), s. 9(*1*), Genl. Acts, Vol. IV.

[2] The illustration to s. 283 was repealed by s. 9 (*2*) of the same Act.

(Part XXXIV.—Of the Duties of an Executor or Administrator.
Part XXXV.—Of the Executor's Assent to a Legacy.)

289. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

290. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum, rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

291. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

PART XXXV.

Of the Executor's Assent to a Legacy.

292. The assent of the executor is necessary to complete a legatee's title to his legacy.

Assent necessary to complete legatee's title.

Illustrations.

(*a*) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(*b*) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

293. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Effect of executor's assent to specific legacy.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Nature of assent.

Illustrations.

(*a*) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(*b*) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(*c*) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(*d*) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(*e*) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

Conditional assent.

294. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Illustrations.

(*a*) A bequeaths to B his lands of Sultanpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest, on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(*b*) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

Assent of executor to his own legacy.

295. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be expressed or implied.

Implied assent.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Illustration.

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

Effect of executor's assent.

296. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(*a*) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser and completes his title to the legacy.

(*b*) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to his legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

Executor when to deliver legacies.

297. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

(Part XXXVI.—Of the Payment and Apportionment of Annuities.
Part XXXVII.—Of the investment of Funds to Provide for Legacies.)

PART XXXVI.

Of the Payment and Apportionment of Annuities.

Commencement of annuity when no time fixed by will.

298. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

When annuity, to be paid quarterly or monthly, first falls due.

299. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death; and shall, if the executor think fit, be paid when due, but the executor shall not be bound to pay it till the end of the year.

Dates of successive payments when first payment directed to be made within given time, or on day certain.

300. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Apportionment where annuitant dies between times of payment.

and, if the annuitant should die in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

PART XXXVII.

Of the Investment of Funds to provide for Legacies.

Investment of sum bequeathed where legacy, not specific, given for life.

301. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of general legacy, to be paid at future time.

302. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Intermediate interest.

The intermediate interest shall form part of the residue of the testator's estate.

Procedure when no fund charged with, or appropriated to, annuity.

303. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased, or,

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the

High Court may, by any general rule to be made from time to time, authorize or direct.

Transfer to residuary legatee of contingent bequest.

304. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee on his giving sufficient security for the payment of the legacy if it shall become due.

Investment of residue bequeathed for life, without direction to invest in particular securities.

305. Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in such securities as the High Court may for the time being regard as good securities shall be converted into money and invested in such securities.

Investment of residue bequeathed for life, with direction to invest in specified securities.

306. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Time and manner of conversion and investment.

307. Such conversion and investment as are contemplated by the two last preceding sections shall be made at such times and in such manner as the executor shall in his discretion think fit;

Interest payable until investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of four per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

308. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge, by whom [1] [or by whose District Delegate] the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards:

and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account:

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid:

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[1] These words in s. 308 were inserted by the District Delegates Act, 1881 (6 of 1881), s. 8, Genl. Acts, Vol. IV.

and such money when paid in shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge, or the Court of Wards, as the case may be, may direct.

PART XXXVIII.

OF THE PRODUCE AND INTEREST OF LEGACIES.

Legatee's title to produce of specific legacy.

309. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(*a*) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn or some of the ewes produce lambs. The wool and lambs are the property of B.

(*b*) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(*c*) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

Residuary legatee's title to produce of residuary fund.

310. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(*a*) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(*b*) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Interest when no time fixed for payment of general legacy.

311. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.—(*1*) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(Part XXXVIII.—Of the Produce and Interest of Legacies.
Part XXXIX.—Of the Refunding of Legacies.)

(2) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

Interest when time fixed.

312. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance.

Rate of interest.

313. The rate of interest shall be four per cent. per annum.

No interest on arrears of annuity within first year after testator's death.

314. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

Interest on sum to be invested to produce annuity.

315. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

PART XXXIX.

Of the Refunding of Legacies.

Refund of legacy paid under Judge's orders.

316. When an executor has paid a legacy under the order of a Judge, he is entitled to call upon the legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

317. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Refund when legacy has become due on performance of condition within further time allowed under section 124.

318. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has been allowed under the 124th section for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

(*Part XXXIX.—Of the Refunding of Legacies.*)

When each legatee compellable to refund in proportion.

319. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

Distribution of assets.

320. Where an executor or administrator has given such notices as would have been given by the High Court in an administration-suit for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he shall not have had notice at the time of such distribution;

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may follow assets.

Creditor may call upon legatee to refund.

321. A creditor who has not received payment of his debt may [1] * * * call upon a legatee who has received payment of his legacy to [2] refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies; and whether the payment of the legacy by the executor was voluntary or not.

When legatee, not satisfied or compelled to refund under section 321, cannot oblige one paid in full to refund.

322. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When unsatisfied legatee must first proceed against executor, if solvent.

323. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor, if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

Limit to refunding of one legatee to another.

324. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and, if properly administered, would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

[1] The words "within two years after the death of the testator, or one year after the legacy has been paid," were repealed by the Indian Limitation Act, 1877 (15 of 1877).

[2] For limitation of suits to compel a refund, *see* now the Indian Limitation Act, 1908 (9 of 1908), Genl. Acts, Vol. VI.

(*Part XXXIX.—Of the Refunding of Legacies. Part XL.—Of the Liability of an Executor or Administrator for Devastation.*)

Refunding to be without interest.

325. The refunding shall in all cases be without interest.

Residue after usual payments to be paid to residuary legatee.

326. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Transfer of assets from British India to executor or administrator in country of domicile for distribution.

[1] **326A.** Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death,

and there have been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country,

the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 320, and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of,

may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

PART XL.

Of the Liability of an Executor or Administrator for Devastation.

Liability of executor or administrator for devastation

327. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(*a*) The executor pays out of the estate an unfounded claim. He is liable to make good the loss,

(*b*) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss.

(*c*) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

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[1] S. 326A was inserted by the Probate and Administration Act, 1890 (2 of 1890), s. 9, Genl. Acts, Vol. IV.

(Part XLI.—Of the Liability of an Executor or Administrator for Devastation. Part XLI.—Miscellaneous.)

328. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount. Liability of executor or administrator for neglect to get in any part of property.

Illustrations.

(*a*) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount.

(*b*) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount.

PART XLI.

MISCELLANEOUS.

329. [*Stamps and Fees.*] *Rep. by the Court-fees Act, 1870 (VII of 1870).*

330. [*Saving as to Administrator General*] *Rep. by the Administrator General's Act, 1867 (XXIV of 1867).*

331. The provisions of this Act shall not apply to intestate or testamentary succession to the property of any [1] Hindú, Muhammadan or Buddhist; or shall they apply to any will made, or any intestacy occurring, before the first day of January, 1866. Succession to property of Hindus, etc., and certain wills, intestacies and marriages not affected.

The fourth section shall not apply to any marriage contracted before the same day.

332. The Governor General of India in Council shall from time to time have power, by an order, either retrospectively from the passing of this Act or prospectively, to [2] exempt from the operation of the whole or Power of Governor General in Council to exempt any

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[1] As to wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal, and the towns of Madras and Bombay, *see* now the Hindu Wills Act, 1870 (21 of 1870), as amended by the Probate and Administration Act, 1881 (5 of 1881), s. 154, Genl. Acts, Vol. III.

As to intestate succession among Pársís, *see* the Pársí Intestate Succession Act, 1865 (21 of 1865), *infra*.

As to moveable property under Rs. 200 in value, of persons dying intestate in a Presidency-town, when taken charge of by the police for safe custody, *see* the Administrator General's Act, 1874 (2 of 1874), Genl. Acts, Vol. II.

As to probate and letters of administration in the case of Hindus, Muhammadans and Buddhists and persons exempted under s. 332, *see* the Probate and Administration Act, 1881 (5 of 1881), Genl. Acts, Vol. III.

[2] The following classes have been exempted from the operation of the whole of the Act retrospectively from the passing of the Act, *viz.*—

all Native Christians in the Province of Coorg, *see* Notification No. 204, dated 23rd July, 1868, in Gazette of India, 1868, p. 1904.

the Jews of Aden, *see* Bom. R & O., Vol. I;

the members of the races known as Khasias and Syntengs, *see* Assam R. & O.

As to probate and letters of administration in the case of persons so exempted, *see* the Probate and Administration Act, 1881 (5 of 1881), Genl. Acts, Vol. III.

race, sect or tribe in British India from operation of Act.

any part of this Act the members of any race, sect or tribe in British India, or any part of such race, sect or tribe, to whom he may consider it impossible or inexpedient to apply the provisions of this Act, or of the part of the Act mentioned in the order.

The Governor General of India in Council shall also have power from time to time to revoke such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations made under this section shall be published in the Gazette of India.

Surrender of revoked probate or letters of administration.

[1] **133.** (*1*) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

(*2*) If such person wilfully and without reasonable cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment of either description for a term which may extend to three months, or with both.

SCHEDULE.

[STAMPS AND FEES.]

Rep. by the Court-fees Act, 1870 (VII of 1870).

ACT No. XV OF 1865 [2].

[*7th April, 1865.*]

An Act to define and amend the law relating to Marriage and Divorce among the Pársís.

Preamble.

WHEREAS the Pársí Community has represented the necessity of defining and amending the law relating to marriage and divorce among Pársís; And whereas it is expedient that such law should be made con-

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[1] S. 333 was added by the Indian Succession Law Amendment Act, 1889 (6 of 1889), s. 10, Genl. Acts, Vol. IV.

[2] For Statement of Objects and Reasons of the Bill which was passed into law as Act 15 of 1865, *see* Gazette of India, 1865, p. 99; for discussions on the Bill, *see ibid*, Supplement, pp. 44, 110 and 113.

This Act has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

formable to the customs of the said community; It is enacted as follows:—

I.—Preliminary.

1. This Act may be cited as the Pársí Marriage and Divorce Act, 1865. Short title.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely:—

Sindh	*See* Gazette of India,	1880, Pt. I, p. 672.
West Jálpaiguri	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum	Ditto	1881, Pt. I, p. 504.
The Scheduled Districts in Ganjam and Vizagapatam	Ditto	1881, Pt. I, p. 870.
The Scheduled portion of the Mirzápur District	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán (*portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Peshawar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575, but its application to that part of the Hazára District, known as Upper Tanawal, is barred by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punj. & N.-W. Code*)	Ditto	1886, Pt. I, p. 48.
The District of Sylhet	Ditto	1879, Pt. I, p. 651.
The rest of Assam (except the North Lushái Hills)	Ditto	1897, Pt. I, p. 299.

It has been declared, by notification under s. 3 (*b*) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul, *see* Gazette of India, 1886, Pt. I, p. 301.

It has been extended, by notification under s. 5 of the same Act, to the following Scheduled Districts, namely:—

Kumáon and Garhwál	*See* Gazette of India,	1876, Pt. I, p. 606.
The Tarái of the Province of Agra	Ditto	1876, Pt. I, p. 505.
British Baluchistan	Ditto	1898, Pt. II, p. 327.

and under ss. 5 and 5A to Upper Burma (except the Shan States), *see* Gazette of India, 1907, Pt. I, p. 594.

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context,—

Number.

[1] Words in the singular number include the plural, and words in the plural number include the singular:

"Priest."

"priest" means a Pársí priest and includes Dastur and Mobed:

"Marriage." "Husband" and "wife".

"marriage" means a marriage between Pársís whether contracted before or after the commencement of this Act; and "husband" and "wife" respectively mean a Pársí husband and a Pársí wife:

"Section."

"section" means a section of this Act:

"Chief Justice."

"Chief Justice" includes Senior Judge:

"Court."

"Court" means a Court constituted under this Act:

"British India."

[2] "British India" means the territories which are or shall be vested in Her Majesty or Her successors by the [3] Statute 21 & 22 Vict., cap. 106, entitled "An Act for the better government of India;" 21 & 22 Vict., c. 106

"Local Government."

And, in any part of British India in which this Act operates [4] "Local Government" means the person authorized to administer executive government in such part of India, or the chief executive officer of such part when it is under the immediate administration of the Governor General of India in Council, and when such officer shall be authorized to exercise the powers, vested by this Act in a Local Government; and

"High Court."

[5] "High Court" means the highest Civil Court of appeal in such part.

II.—Of Marriages between Pársís.

Requisites to validity of Pársí marriages.

3. No marriage contracted after the commencement of this Act shall be valid if the contracting parties are related to each other in any of the degrees of consanguinity or affinity prohibited among Pársís, and set forth in a [6] table which the Governor General of India in Council shall, after due enquiry, publish in the Gazette of India, and unless such

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[1] *Cf.* General Clauses Act, 1897 (10 of 1897), s. 13 (*2*), Genl. Acts, Vol. IV.
[2] *Cf. ibid*, s. 3 (*27*).
[3] *See* "the Government of India Act, 1858" (21 & 22 Vict., c. 106), Coll. Stats., Ind., Vol. II.
[4] *Cf.* definition in s. 3 (*29*), General Clauses Act, 1897 (10 of 1897), Genl. Acts, Vol. IV.
[5] *Cf.* definition in s. 3 (*24*), *ibid.*
[6] The following table was published in the Gazette of India of the 9th September, 1865, pp. 981, 982 :—

TABLE.

A man shall not marry his—

1. Paternal grand-father's mother.
2. Paternal grand-mother's mother.
3. Maternal grand-father's mother.
4. Maternal grand-mother's mother.
5. Paternal grand-mother.
6. Paternal grand-father's wife.
7. Maternal grand-mother.
8. Maternal grand-father's wife.
9. Mother or step-mother.
10. Father's sister or step-sister.
11. Mother's sister or step-sister.
12. Sister or step-sister.

marriage shall be solemnized according to the Pársí form of ceremony called " Asírvád " by a Pársí priest in the presence of two Pársí witnesses independently of such officiating priest; and unless, in the case of any Pársí who shall not have completed the age of twenty-one years, the consent of his or her father or guardian shall have been previously given to such marriage.

Re marriage save after divorce un-

4. No Pársí shall, after the commencement of this Act, contract any marriage in the lifetime of his or her wife or husband, except after his

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13. Brother's daughter or step-brother's daughter, or any direct lineal descendant of a brother or step-brother.
14. Sister's daugther or step-sister's daughter, or any direct lineal descendant of a sister or step-sister.
15. Daughter or step-daughter, or any direct lineal descendant of either.
16. Son's daughter or step-son's daughter, or any direct lineal descendant of a son or step-son.
17. Wife of son or step-son, or of any direct lineal descendant of a son or step-son.
18. Wife of daughter's son or of step-daughter's son, or of any direct lineal descendant of a daughter or step-daughter.
19. Mother of daughter's husband.
20. Mother of son's wife.
21. Mother of wife's paternal grand-father.
22. Mother of wife's paternal grand-mother.
23. Mother of wife's maternal grand-father.
24. Mother of wife's maternal grand-mother.
25. Wife's paternal grand-mother.
26. Wife's maternal grand-mother.
27. Wife's mother or step-mother.
28. Wife's father's sister.
29. Wife's mother's sister.
30. Father's brother's wife.
31. Mother's brother's wife.
32. Brother's son's wife.
33. Sister's son's wife.

A woman shall not marry her—

1. Paternal grand-father's father.
2. Paternal grand-mother's father.
3. Maternal grand-father's father.
4. Maternal grand-mother's father.
5. Paternal grand-father.
6. Paternal grand-mother's husband.
7. Maternal grand-father.
8. Maternal grand-mother's husband.
9. Father or step-father.
10. Father's brother or step-brother.
11. Mother's brother or step-brother.
12. Brother or step-brother.
13. Brother's son or step-brother's son or any direct lineal descendant of a brother or step-brother.
14. Sister's son or step-sister's son, or any direct lineal descendant of a sister or step-sister.
15. Son or step-son, or any direct lineal descendant of either.
16. Daughter's son or step-daughter's son, or any direct lineal descendant of a daughter or step-daughter.
17. Husband of daughter or of step-daughter, or of any direct lineal descendant of a daughter or step-daughter.
18. Husband of son's daughter or of step-son's daughter, or of any direct lineal descendant of a son or step-son.
19. Father of daughter's husband.
20. Father of son's wife.
21. Father of husband's paternal grand-father.
22. Father of husband's paternal grand-mother.
23. Father of husband's maternal grand-father.
24. Father of husband's maternal grand-mother.
25. Husband's paternal grand-father.
26. Husband's maternal grand-father.
27. Husband's father or step-father.
28. Brother of husband's father.
29. Brother of husband's mother.
30. Husband's brother's son, or his direct lineal descendant.
31. Husband's sister's son, or his direct lineal descendant.
32. Brother's daughter's husband.
33. Sister's daughter's husband.

Note.—In the above table the words " brother " and " sister " denote brother and sister of the whole as well as half blood. Relationship by step means relationship by marriages.

lawful during lifetime of first wife or husband.

or her lawful divorce from such wife or husband, by sentence of a Court as hereinafter provided:

and every marriage contracted contrary to the provisions of this section shall be void.

Punishment of bigamy.

5. Every Pársí who shall, after the commencement of this Act and during the lifetime of his or her wife or husband, contract any marriage without having been lawfully divorced from such wife or husband shall be subject to the penalties provided in sections 494 and 495 of the [1] Indian Penal Code for the offence of marrying again during the lifetime of a husband or wife. XLV of 1860

Certificate and registry of marriages.

6. Every marriage contracted after the commencement of this Act shall, immediately on the solemnization thereof, be certified by the officiating priest in the form contained in the schedule to this Act.

The certificate shall be signed by the said priest, the contracting parties, or their fathers or guardians when they shall not have completed the age of twenty-one years, and two witnesses present at the marriage; and the said priest shall thereupon send such certificate, together with a fee of two rupees to be paid by the husband, to the Registrar of the place at which such marriage is solemnized.

The Registrar on receipt of the certificate and fee shall enter the certificate in a register to be kept by him for that purpose, and shall be entitled to retain the fee.

Appointment of Registrar.

7. For the purposes of this Act a Registrar shall be appointed [2] * * *

Within the local limits of the ordinary original civil jurisdiction of a High Court the [3] Registrar shall be appointed by the Chief Justice of such Court, and, without such limits, by the Local Government. Every Registrar so appointed may be removed by the Chief Justice or Local Government appointing him.

Marriage-register to be open for public inspection.

8. The register of marriages mentioned in section 6 shall, at all reasonable times, be open for inspection, and certified extracts therefrom shall, on application, be given by the Registrar on payment to him by the applicant of two rupees for each such extract.

Every such register shall be evidence of the truth of the statements herein contained.

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[1] *Supra.*

[2] The words " who may be the Registrar appointed under Act 16 of 1864 (*to provide for the Registration of Assurances*) " were repealed by the Repealing Act, 1870 (14 of 1870).

[3] Registrars of Assurance in certain towns in the Central Provinces have been appointed Registrars of Parsi Marriages—

(*1*) Bombay, *see* Bom. R. and O., Vol. I.
(*2*) Burma, *see* the Bur. R. M.
(*3*) Central Provinces, *see* Cent. Provs. R. and O.

For such Registrars in the N.-W. Frontier Province, *see* Gazette of India, 1901, Pt. II, p. 1304.

(II.—Of Marriages between Pársís.)

Transmission of certified copies of certificates in marriage-register to Registrar General of Births, Deaths and Marriages.

[1] **8A.** Every Registrar, except the Registrar appointed by the Chief Justice of the High Court of Judicature at Bombay, shall, at such intervals as the Governor General in Council from time to time [2] directs, send to the Registrar General of Births, Deaths and Marriages for the territories administered by the Local Government by which he was appointed, a true copy certified by him, in such form as the Governor General, from time to time, prescribes, of all certificates entered by him in the said register of marriages since the last of such intervals.

Penalty for solemnizing marriage contrary to section 4.

9. Any priest knowingly and wilfully solemnizing any marriage contrary to and in violation of section 4 shall, on conviction thereof, be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

Penalty for priest's neglect of requirements of section 6.

10. Any priest neglecting to comply with any of the requisitions affecting him contained in section 6 shall, on conviction thereof, be punished for every such offence with simple imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

Penalty for omitting to subscribe and attest certificate.

11. Every other person required by section 6 to subscribe or attest the said certificate, who shall wilfully omit or neglect so to do, shall, on conviction thereof, be punished for every such offence with a fine not exceeding one hundred rupees.

Penalty for making, etc., false certificate.

12. Every person making or signing or attesting any such certificate containing a statement which is false, and which he either knows or believes to be false, or does not know to be true, shall be deemed to be guilty of the offence of forgery as defined in the [3] Indian Penal Code, and shall be liable, on conviction thereof, to the penalties provided in section 466 of the said Code.

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Penalty for not registering certificate.

13. Any Registrar failing to enter the said certificate pursuant to section 6 shall be punished with simple imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Penalty for secreting, destroying or altering register.

14. Any person secreting, destroying or dishonestly or fraudulently altering the said register in any part thereof shall be punished with imprisonment of either description as defined in the [3] Indian Penal Code for a term which may extend to two years, or, if he be a Registrar, for a term which may extend to five years, and shall also be liable to fine which may extend to five hundred rupees.

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[1] S. 8A was added by the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886), s. 31, Genl. Acts, Vol. III.

[2] For notification fixing the dates for transmission of certified copies of certificates in marriage registers to the Registrar-General of Births, Deaths and Marriages, *see* No. 6—1074-85, dated 9th August, 1889—Gazette of India, 1889, p. 921.

[3] *Supra.*

III.—Of Pársí Matrimonial Courts.

Constitution of special Courts under Act.

15. For the purposes of hearing suits under this Act, a [1] special Court shall be constituted in each of the presidency-towns of Calcutta, Madras and Bombay, and in such other places in the territories of the several Local Governments as such Governments respectively shall think fit.

Pársí Chief Matrimonial Courts.

16. The Court so constituted in each of the presidency-towns shall be entitled the Pársí Chief Matrimonial Court of Calcutta, Madras or Bombay, as the case may be.

The local limits of the jurisdiction of a Pársí Chief Matrimonial Court shall be conterminous with the local limits of the ordinary original civil jurisdiction of the High Court.

The Chief Justice of the High Court, or such other Judge of the same Court as the Chief Justice shall from time to time appoint, shall be the Judge of such Matrimonial Court, and, in the trial of cases under this Act, he shall be aided by eleven delegates.

Pársí District Matrimonial Court.

17. Every Court so constituted at a place other than a presidency-town shall be entitled the Pársí District Matrimonial Court of such place.[2]

Subject to the provisions contained in the next following section, the local limits of the jurisdiction of such Court shall be conterminous with the limits of the district in which it is held.

The Judge of the principal Court of original civil jurisdiction at such place shall be the Judge of such Matrimonial Court, and, in the trial of cases under this Act, he shall be aided by seven delegates.

Power to alter territorial jurisdiction of District Courts.

18. The Local Government may from time to time alter the local limits of the jurisdiction of any Pársí District Matrimonial Court, and may include within such limits any number of districts under its government.[3]

Certain districts within jurisdiction of Chief Matrimonial Court.

19. Any district which the Local Government, on account of the fewness of the Pársí inhabitants, shall deem it inexpedient to include within the jurisdiction of any District Matrimonial Court, shall be included

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[1] For notification constituting the Parsi Chief Matrimonial Court in—
(*1*) Bombay, *see* Bom. R. and O., Vol. I.
(*2*) Central Provinces, *see* C. P. R. and O.
(*3*) Lower Burma except the Hill district of Arakan, *see* Burma Gazette, 1903, Pt. I, p. 480.
(*4*) Madras, *see* Mad. R. and O., Vol. I, Pt. II.

[2] For notification constituting District Courts in Surat, Puna and in Sindh, *see* Bom. R. & O., Vol. I.

[3] For notification fixing the local limits of the jurisdiction of the Courts constituted at Puna and at Surat under s. 17, *see* Bom. R. and O., Vol. I.

within the jurisdiction of the [1] Pársí Chief Matrimonial Court for the territories under such Local Government where there is such Court.

Court seal.

20. A seal shall be made for every Court constituted under this Act, and all decrees and orders and copies of decrees and orders of such Court shall be sealed with such seal, which shall be kept in the custody of the presiding Judge.

Appointment of delegates.

21. The Local Governments shall, in the presidency-towns and districts subject to their respective governments, respectively appoint persons to be delegates to aid in the adjudication of cases arising under this Act.

The persons so appointed shall be Pársís: their names shall be published in the official Gazette; and their number shall, within the local limits of the ordinary original civil jurisdiction of a High Court, be not more than thirty, and in districts beyond such limits not more than twenty.

Power to appoint new delegates.

22. The appointment of a delegate shall be for life.

But whenever a delegate shall die, or be desirous of relinquishing his office, or refuse or become incapable or unfit to act, or be convicted of an offence under the [2] Indian Penal Code or other law for the time being in force, then and so often the Local Government may appoint any other person being a Pársí to be a delegate in his stead; and the name of the person so appointed shall be published in the official Gazette.

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Delegates deemed public servants.

23. All delegates appointed under this Act shall be considered to be public servants within the meaning of the [2] Indian Penal Code

Selection of delegates under sections 16 and 17 from those appointed under section 21.

24. The delegates selected under sections 16 and 17 to aid in the adjudication of suits under this Act shall be taken under the orders of the presiding Judge of the Court in due rotation from the delegates appointed by the Local Government under section 21.

Practitioners in Matrimonial Courts.

25. All advocates, vakils and attorneys-at-law entitled to practise in a High Court shall be entitled to practise in any of the Courts constituted under this Act, and all vakils entitled to practise in a District Court shall be entitled to practise in any District Matrimonial Court constituted under this Act.

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[1] Under this power the settlement of Aden and its depencies have been included within the jurisdiction of the Parsi Chief Matrimonial Court of Bombay, *see ibid*, pp. 27 and 28.

For notification declaring all districts in the Madras Presidency where the Act is in force to be included within the jurisdiction of the Parsi Chief Matrimonial Court at Madras, *see* Mad. R. and O., Vol. I., Pt. II.

For notification including all districts in Upper Burma as well as those in Lower Burma within the jurisdiction of the Parsi Chief Matrimonial Court at Rangoon, *see* Burma Gazette, 1907, Pt. I, p. 918.

[2] *Supra.*

Court in which suits to be brought.

26. All suits instituted under this Act shall be brought in the Court within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit.

When defendant has left British India.

When the defendant shall at such time have left British India, such suit shall be brought in the Court at the place where the plaintiff and defendant last resides together.

IV.—Of Matrimonial Suits.

(*a*) *For a Decree of Nullity.*

In case of lunacy or mental unsoundness.

27. If a Pársí at the time of his or her marriage was a lunatic or of habitually unsound mind, such marriage may, at the instance of his or her wife or husband, be declared null and void upon proof that the lunacy or habitual unsoundness of mind existed at the time of the marriage and still continues:

Provided that no suit shall be brought under this section if the plaintiff shall at the time of the marriage have known that the respondent was a lunatic or of habitually unsound mind.

In case of impotency.

28. In any case in which consummation of the marriage is from natural causes impossible, such marriage may, at the instance of either party thereto, be declared to be null and void.

(*b*) *For a Decree of Dissolution in Case of Absence.*

In case of absence for seven years.

29. If a husband or wife shall have been continually absent from his or her wife or husband for the space of seven years, and shall not have been heard of as being alive within that time by those persons who would naturally have heard of him or her had he or she been alive, the marriage of such husband or wife may, at the instance of either party thereto, be dissolved.

(*c*) *For Divorce or Judicial Separation.*

On ground of wife's adultery.

30. Any husband may sue that his marriage may be dissolved, and a divorce granted, on the ground that his wife has since the celebration thereto been guilty of adultery;

On ground of husband's adultery, etc.

and any wife may sue that her marriage may be dissolved and a divorce granted on the ground that since the celebration thereof her husband has been guilty of adultery with a married or fornication with an unmarried woman not being a prostitute, or of bigamy coupled with adultery, or of adultery coupled with cruelty, or of adultery coupled with wilful desertion for two years or upwards, or of rape, or of an unnatural offence.

In every such suit for divorce on the ground of adultery the plaintiff shall, unless the Court shall otherwise order, make the person with whom the adultery is alleged to have been committed a co-defendant, and in any such suit by the husband the Court may order the adulterer to pay the whole or any part of the costs of the proceedings.

Grounds of judicial separation.

31. If a husband treat his wife with such cruelty or personal violence as to render it in the judgment of the Court improper to compel her to live with him, or if his conduct afford her reasonable grounds for apprehending danger to life or serious personal injury, or if a prostitute be openly brought into or allowed to remain in the place of abode of a wife by her own husband, she shall be entitled to demand a judicial separation.

Suits for divorce or judicial separation.

32. In a suit for divorce or judicial separation under this Act, if the Court be satisfied of the truth of the allegations contained in the plaint, and

that the offence therein set forth has not been condoned, and
that the husband and wife are not colluding together, and
that the plaintiff has not connived at or been accessory to the said offence,
and that there has been no unnecessary or improper delay in instituting the suit, and
that there is no other legal ground why relief should not be granted,
then and in such case, but not otherwise, the Court shall decree a divorce or judicial separation accordingly.

Alimony *pendente lite.*

33. In any suit under this Act for divorce or judicial separation, if the wife shall not have an independent income sufficient for her support and the necessary expenses of the suit, the Court, on the application of the wife shall not have an independent income sufficient for her support suit such sum, not exceeding one-fifth of the husband's net income, as the Court, considering the circumstances of the parties, shall think reasonable.

Permanent alimony.

34. The Court may, if it shall think fit, on any decree for divorce or judicial separation, order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum, or such monthly or periodical payments of money for a term not exceeding her life, as, having regard to her own property (if any), her husband's ability and the conduct of the parties, shall be deemed just, and for that purpose may require a proper instrument to be executed by all necessary parties and suspend the pronouncing of its decree until such instrument shall have been duly executed.

In case any such order shall not be obeyed by her husband, he shall be liable to damages at her suit, and further to be sued by any person supplying her with necessaries, during the time of such disobedience, for the price or value of such necessaries.

Payment of alimony to wife or her trustee.

35. In all cases in which the Court shall make any decree or order for alimony, it may direct the same to be paid either to the wife herself or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court may seem expedient, and may from time to time appoint a new trustee, if for any reason it shall appear to the Court expedient so to do.

(d) For Restitution of Conjugal Rights.

Suit for restitution of conjugal rights.

36. Where a husband shall have deserted or without lawful cause ceased to cohabit with his wife, or where a wife shall have deserted or without lawful cause ceased to cohabit with her husband, the party so deserted or with whom cohabitation shall have so ceased may sue for the restitution of his or her conjugal rights, and the Court, if satisfied of the truth of the allegations contained in the plaint, and that there is no just ground why relief should not be granted, may proceed to decree such restitution of conjugal rights accordingly..

If such decree shall not be obeyed by the party against whom it is passed, he or she shall be liable to be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both.

No suit to enforce marriage or contract arising out of marriage when husband under 16, or wife under 14, years.

37. Notwithstanding anything hereinbefore contained, no suit shall be brought in any Court to enforce any marriage between Pársís, or any contract connected with or arising out of any such marriage, if, at the date of the institution of the suit, the husband shall not have completed the age of sixteen years, or the wife shall not have completed the age of fourteen years.

Suits with closed doors.

38. In every suit preferred under this Act, the case shall be tried with closed doors, should such be the wish of either of the parties.

39. [*Stamps on plaints and petitions.*] *Rep. by the Court-fees Act, 1870 (VII of 1870).*

Civil Procedure Code applied.

40. The provisions of the Code of Civil Procedure shall, so far as the same may be applicable, apply to suits instituted under this Act.

Determination of questions of law, procedure and fact.

41. In suits under this Act all questions of law and procedure shall be determined by the presiding Judge; but the decision on the facts shall be the decision of the majority of the delegates before whom the case is tried.

(*IV.—Of Matrimonial Suits. V.—Of the Children of the Parties. VI.—Of the Mode of enforcing Penalties under this Act.*)

Appeal to High Court.

42. An appeal shall lie to the High Court from the decision of any Court established under this Act, whether a Chief Matrimonial Court or a District Matrimonial Court, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground:

Provided that such appeal be instituted within three calendar months after the decision appealed from shall have been pronounced.

Liberty to parties to marry again.

43. When the time hereby limited for appealing against any decree dissolving a marriage shall have expired, and no appeal shall have been presented against such decree, or

when any such appeal shall have been dismissed, or

when in the result of any appeal any marriage shall be declared to be dissolved, but not sooner,

it shall be lawful for the respective parties thereto to marry again, as if the prior marriage had been dissolved by death.

V.—Of the Children of the Parties.

Custody of children *pendente lite.*

44. In any suit under this Act for obtaining a judicial separation or a decree of nullity of marriage, or for dissolving a marriage, the Court may from time to time pass such interim orders, and make such provision in the final decree as it may deem just and proper, with respect to the custody, maintenance and education of the children under the age of sixteen years, the marriage of whose parents is the subject of such suit,

Orders as to custody of children after final decree.

and may, after the final decree upon application by petition for this purpose, make from time to time all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such final decree, or by interim orders in case the suit for obtaining such decree were still pending.

Settlement of wife's property for benefit of children.

45. In any case in which the Court shall pronounce a decree of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife is entitled to any property either in possession or reversion, the Court may order such settlement as it shall think reasonable to be made of such property, or any part thereof, for the benefit of the children of the marriage or any of them.

VI.—Of the Mode of enforcing Penalties under this Act.

Cognizance of offences under Act.

46. All offences under this Act may be tried by any officer exercising the powers of a Magistrate, unless the period of imprisonment to which

(VI.—Of the Mode of enforcing Penalties under this Act.)

the offender is liable shall exceed that which such officer is competent to award under the law for the time being in force in the place in which he is employed.

When the period of imprisonment provided by this Act exceeds the period that may be awarded by such officer, the offender shall be committed for trial before the Court of Session.

Punishment of offences under Act committed within local limits of High Court.

47. If any offence which by this Act is declared to be punishable with fine, or with fine and imprisonment not exceeding six months, shall be committed by any person within the local limits of the ordinary original civil jurisdiction of the High Court, such offence shall be punishable upon summary conviction by any Magistrate of Police [1] of the place at which such Court is held.

Levy of fines by distress.

48. All fines imposed under the authority of this Act may, in case of non-payment thereof, be levied by distress and sale of the offender's moveable property by warrant under the hand of the officer imposing the fine.

Procedure until return made to distress-warrant.

49. In case any such fine shall not be forthwith paid, such officer may order the offender to be arrested and kept in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

Imprisonment if no sufficient distress.

50. If upon the return of the warrant it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or

in case it shall appear to the satisfaction of such officer, by the confession of the offender or otherwise, that he has not sufficient moveable property whereupon such fine could be levied if a warrant of distress were issued,

any such officer may, by warrant under his hand, commit the offender to prison, for any term not exceeding two calendar months when the amount of fine shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount of fine.

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[1] The reference should now be read as to "Presidency Magistrate," *see* the Code of Criminal Procedure, 1898 (Act V of 1898), s. 3, Genl. Acts, Vol. V.

VII.—Miscellaneous.

Rules of procedure of Pársí Matrimonial Courts to be made by High Court.

51.[1] Subject to the provisions contained or referred to in this Act, the High Court shall make such rules and regulations concerning the practice and procedure of the Pársí Chief and District Matrimonial Courts in the Presidency or Government in which such High Court shall be established, as it may from time to time consider expedient, and shall have full power from time to time to revoke or alter the same.

All such rules, revocations and alterations shall be published in the official Gazette.

Power to invest chief executive officer with powers of Local Government.

52. The Governor General of India in Council may invest the chief executive officer of any part of British India under the immediate administration of the Government of India with the powers vested by this Act in a Local Government.

53. [*Commencement and extent of Act.*] *Rep. by the Repealing Act, 1876 (XII of 1876).*

SCHEDULE.

(*See section 6.*)

Date and place of marriage.	Names of the husband and wife.	Condition at the time of marriage.	Rank or profession.	Age.	Residence.	Names of the fathers or guardians.	Rank or profession.	Signature of the officiating priest.	Signatures of the witnesses.	Signature of father or guardian when husband or wife is an infant.

[1] For rules made under this section for the Parsi Chief and District Matrimonial Courts of—

(*1*) the Bombay Presidency, *see* Bom. R. and O., Vol. I.
(*2*) Lower Burma, *see* Burma Gazette, 1904, Pt. IV, p. 383.

ACT No. XXI OF 1865 [1].

[*10th April, 1865.*]

An Act to define and amend the law relating to Intestate Succession among the Pársís.

Preamble.

WHEREAS it is expedient to define and amend the law relating to intestate succession among the Pársís; It is enacted as follows:—

Division of property among

1. Where a Pársí dies leaving a widow and children, the property of which he shall have died intestate shall be divided among the widow and

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[1] Short title, "The Parsi Intestate Succession Act, 1865." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

For Statement of Objects and Reasons of the Bill which was passed into law as Act 21 of 1865, *see* Gazette of India, 1865, p. 219 and for proceedings relating to the Bill, *see ibid*, Supplement, pp. 68, 99, 113 and 154.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by s. 3 of the Laws Local Extent Act, 1874 (15 of 1874), Genl. Acts, Vol. II.

It has also been declared to be in force in the Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (9 of 1874), s. 3, Bur. Code.

It has been declared to be in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), Bur. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India,	1880, Pt. I, p. 672.
West Jalpaiguri	Ditto	1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum	Ditto	1881, Pt. I, p. 504.
The Scheduled Districts in Ganjam and Vizagapatam	Ditto	1898, Pt. I, p. 870.
Kumáon and Garhwál	Ditto	1876, Pt. I, p. 605.
The Scheduled portion of the Mirzápur District	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán (*portions of the districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the districts of Pesháwar and Kohát now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575, but its application to that part of the Hazára district, known as Upper Tanawal, is barred by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punj. and N.-W. Code*)	Ditto	1886, Pt. I, p. 48.
Ajmer and Merwára	Ditto	1878, Pt. I, p. 380.

children, so that the share of each son shall be double the share of the widow, and that her share shall be double the share of each daughter. widow and children of intestate.

2. Where a female Pársí dies leaving a widower and children, the property of which she shall have died intestate shall be divided among the widower and such children, so that his share shall be double the share of each of the children. Division of property among widower and children of intestate.

3. When a Pársí dies leaving children but no widow, the property of which he shall have died intestate shall be divided amongst the children, so that the share of each son shall be four times the share of each daughter. Division of property amongst children of male intestate leaving no widow.

4. When a female Pársí dies leaving children but no widower, the property of which she shall have died intestate shall be divided amongst the children in equal shares. Division amongst children of female intestate leaving no widower.

5. If any child of a Pársí intestate shall have died in his or her lifetime, the widow or widower and issue of such child shall take the share which such child would have taken if living at the intestate's death in such manner as if such deceased child had died immediately after the intestate's death. Division of predeceased child's share among widow or widower and issue of such child.

6. Where a Pársí dies leaving a widow or widower, but without leaving any lineal descendants, his or her father and mother, if both are living, or one of them if the other is dead, shall take one moiety of the property as to which he or she shall have died intestate, and the widow or widower shall take the other moiety. Division of property when intestate leaves widow, or widower, but no lineal descendants.

Where both the father and the mother of the intestate survive him or her, the father's share shall be double the share of the mother.

Where neither the father nor the mother of the intestate survives him or her, the intestate's relatives on the father's side, in the order specified in the first schedule hereto annexed, shall take the moiety which the father and the mother would have taken if they had survived the intestate.

Th next-of-kin standing first in the same schedule shall be preferred to those standing second, the second to the third, and so on in succession: Provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity.

The District of Sylhet . . *See* Gazette of India, 1879, Pt. I, p. 631.
The rest of Assam (except the North Lushái Hills) . . Ditto 1897, Pt. I, p. 299.

It has been declared, by notification under s. 3 (*b*) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul. *See* Gazette of India, 1886, Pt. I, p. 301.

It has been extended, by notification under s. 5 of the same Act, to the Tarái of the Province of Agra. *See* Gazette of India, 1876, Pt. I, p. 505.

If there be no relatives on the father's side, the intestate's widow or widower shall take the whole.

Division of property when intestate leaves neither widow nor widower nor lineal descendants.

7. When a Pársí dies leaving neither lineal descendants nor a widow or widower, his or her next-of-kin, in the order set forth in the second schedule hereto annexed, shall be entitled to succeed to the whole of the property as to which he or she shall have died intestate.

The next-of-kin standing first in the same schedule shall always be preferred to those standing second, the second to the third, and so on in succession: Provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity.

Exemption of Pársís from parts of Indian Succession Act, 1865.

8. The following portions of the [1] Indian Succession Act, 1865, shall not apply to Pársís (that is to say), the whole of Part III, the whole of Part IV, excepting section 25, the whole of Part V, and section 43. X of 1865.

THE FIRST SCHEDULE.

(1) Brothers and sisters, and the children or lineal descendants of such of them as shall have predeceased the intestate.

(2) Grandfather and grandmother.

(3) Grandfather's sons and daughters, and the lineal descendants of such of them as shall have predeceased the intestate.

(4) Great-grandfather and great-grandmother.

(5) Great-grandfather's sons and daughters, and the lineal descendants of such of them as shall have predeceased the intestate.

THE SECOND SCHEDULE.

(1) Father and mother.

(2) Brothers and sisters and the lineal descendants of such of them as shall have predeceased the intestate.

(3) Paternal grandfather and paternal grandmother.

(4) Children of the paternal grandfather, and the lineal descendants of such of them as shall have predeceased the intestate.

(5) Paternal grandfather's father and mother.

(6) Paternal grandfather's father's children, and the lineal descendants of such of them as shall have predeceased the intestate.

(7) Brothers and sisters by the mother's side, and the lineal descendants of such of them as shall have predeceased the intestate.

(8) Maternal grandfather and maternal grandmother.

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[1] *Supra.*

(9) Children of the maternal grandfather, and the lineal descendants of such of them as shall have predeceased the intestate.

(10) Son's widow, if she have not re-married at or before the death of the intestate.

(11) Brother's widow, if she have not re-married at or before the death of the intestate.

(12) Paternal grandfather's son's widow, if she have not re-married at or before the death of the intestate.

(13) Maternal grandfather's son's widow, if she have not re-married at or before the death of the intestate.

(14) Widowers of the intestate's deceased daughters, if they have not re-married at or before the death of the intestate.

(15) Maternal grandfather's father and mother.

(16) Children of the maternal grandfather's father, and the lineal descendants of such of them as shall have predeceased the intestate.

(17) Paternal grandmother's father and mother.

(18) Children of the paternal grandmother's father, and the lineal descendants of such of them as shall have predeceased the intestate.

ACT No. XXI OF 1866 [1].

[*2nd April, 1866.*]

An Act to legalize, under certain circumstances, the dissolution of marriages of Native Converts to Christianity.

WHEREAS it is expedient to legalize, under certain circumstances, the dissolution of marriages of Native Converts to Christianity deserted or repudiated on religious grounds by their wives or husbands; It is enacted as follows:— Preamble.

1. This Act may be cited as the Native Converts' Marriage Dissolution Act, 1866. Short title.

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[1] For Statement of Objects and Reasons to the Bill which was passed into law as Act 21 of 1866, *see* Gazette of India, 1865, p. 59; for the Report of the Select Committee, *see ibid*, 1866, p. 163 and for discussions on the Bill, *see ibid*, 1865, Supplement, p. 5, and 1866, Supplement, p. 201.

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation, 1872 (3 of 1872), Ben Code, Vol. I, and in the Arakan Hill District, except so much as relates to a stamp, by the Arakan Hill District Laws Regulation, 1874 (9 of 1874), Bur. Code.

2. [*Commencement of Act.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

Interpretation-clause.

"Native husband."

3. In this Act—

"Native husband" shall mean a married man domiciled in British India, who shall have completed the age of sixteen years, and shall not be a Christian, a Muhammadan nor a Jew:

"Native wife."

"Native wife" shall mean a married woman domiciled in British India, who shall have completed the age of thirteen years, and shall not be a Christian, a Muhammadan nor a Jewess:

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

Sindh	*See* Gazette of India,	1880, Pt. I, p. 672.
West Jalpáiguri . . .	Ditto	1881, Pt. I, p. 74.
The District of Dárjiling .	Ditto	1886, Pt. I, p. 500.
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum	Ditto	1881, Pt. I, p. 504.
The Porahat Estate in the Singbhum District . .	Ditto	1897, Pt. I, p. 1059.
The Scheduled Districts in Ganjam and Vizagapatam .	Ditto	1898, Pt. I, p. 870.
The Scheduled portion of the Mirzápur District . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar . . .	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán (*portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát, now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575, but its application to that part of the Hazára District, known as Upper Tanawal, is barred by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punj. and N.-W. Code*) .	Ditto	1886, Pt. I, p. 48.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushái Hills) . .	Ditto	1897, Pt. I, p. 299.
The District of Lahaul . .	Ditto	1886, Pt. I, p. 301.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

Kumáon and Garhwál . .	*See* Gazette of India,	1876, Pt. I, p. 606.
The Tarái of the Province of Agra	Ditto	1876, Pt. I, p. 505.

"Native law" shall mean any law, or custom having the force of law, of any persons domiciled in British India other than Christians, Muhammadans and Jews: "Native law."

"month" and "year" shall respectively mean month and year according to the British calendar: "Month" and "year."

"High Court" shall mean the highest Civil Court of appeal in any place to which this Act extends: "High Court."

and, unless there be something repugnant in the subject or context, words importing the singular number shall include the plural and words importing the plural number shall include the singular. Number.

4. If a Native husband change his religion for Christianity, and if in consequence of such change his Native wife for the space of six continuous months, desert or repudiate him, he may sue her for conjugal society. When convert deserted by his wife may sue for conjugal society.

5. If a Native wife change her religion for Christianity, and if in consequence of such change her Native husband for the space of six continuous months desert or repudiate her, she may sue him for conjugal society. When convert deserted by her husband may sue.

6. If the respondent, at the time of commencement of such suit, reside within the local limits of the ordinary original civil jurisdiction of any of the High Courts of Judicature the suit shall be commenced in such Court; otherwise it shall be commenced in the principal Civil Court of original jurisdiction of the district in which the defendant shall reside at the commencement of the suit. Court in which suit shall be brought.

7. The suit shall be commenced by a petition in the form in the first schedule to this Act, or as near thereto as the circumstances of the case will allow. Suit to be commenced by verified petition.

The statements made in the petition shall be verified by the petitioner in the manner required by law for the verification of plaints; and the petition [1] * * * may be amended by permission of the Court.

8. A copy of the petition shall be served upon the respondent, and the Court shall thereupon issue a citation under the seal of the Court and signed by the Judge. On service of petition, citation to respondent.

9. In ordinary cases the citation shall be in the form in the second schedule to this Act, or as near thereto as the circumstances of the case will allow. Form of citation.

But where the respondent is exempt by law from personal appearance in Court, or where the Judge shall so direct, the citation shall be in the form in the third schedule to this Act, or as near thereto as the circumstances of the case will allow.

[1] The words "shall bear a stamp of two rupees, and," were repealed by the Court-fees Act, 1870 (7 of 1870), Sch. III, Genl. Acts, Vol. II.

Service of citation.

10. A copy of the citation sealed with the seal of the Court shall be served on the respondent; and the provisions of the Code of Civil Procedure, as to the service and endorsement of summonses shall apply, *mutatis mutandis*, to citations under this Act.

Penalty on respondent not obeying citation.

11. If the respondent shall not obey such citation and comply with every other requirement made upon her or him under the provisions of this Act, she or he shall be liable to punishment under section 174 of the [1] Indian Penal Code. XLV of 1

Points to be proved on appearance of petitioner.

12. On the day fixed in the citation the petitioner shall appear in Court, and the following points shall be proved—

(1) the identity of the parties:

(2) the marriage between the petitioner and the respondent:

(3) that the male party to the suit has completed the age of sixteen years, and that the female party to the suit has completed the age of thirteen years:

(4) the desertion or repudiation of the petitioner by the respondent:

(5) that such desertion or repudiation was in consequence of the petitioner's change of religion:

(6) and that such desertion or repudiation had continued for the six months immediately before the commencement of the suit.

First interrogation of respondent.

13. The respondent, if such points be proved to the satisfaction of the Judge, shall thereupon be asked whether she or he refuses to cohabit with the petitioner, and, if so, what is the ground of such refusal.

In ordinary cases such interrogation and every other interrogation prescribed by this Act shall be made by the Judge, but when the respondent is exempt by law from personal appearance in Court, or when the Judge shall in his discretion excuse the respondent from such appearance, the interrogations shall be made by commissioners acting under such commission as hereinafter mentioned.

Interrogations by Judge may be public or private.

14. Every interrogation mentioned in this Act and made by the Judge may, at the discretion of the Judge, take place in open Court or in his private room.

If any such interrogation take place in open Court, the Judge may, so long as it shall continue, exclude from the Court all such persons as he shall think fit to exclude.

Procedure when female respondent

15. If the respondent be a female and in answer to the interrogatories of the Judge or commissioners, as the case may be, shall refuse to

[1] *Supra.*

cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall make an order adjourning the case for a year, and directing that, in the interim the parties shall, at such place and time as he shall deem convenient have an interview of such length as the Judge shall direct, and in the presence of such person or persons (who may be a female or females) as the Judge shall select with the view of ascertaining whether or not the respondent freely and voluntarily persists in such refusal.

refuses to cohabit with petitioner.

Adjournment for a year.

Interview.

16. At the expiration of such adjournment the petitioner shall again appear in Court and shall prove that the said desertion or repudiation had continued up to the time last hereinbefore referred to, and if the points mentioned in section 12 and this section of this Act shall be proved to the satisfaction of the Judge, and if the respondent on being interrogated by the Judge or commissioners, as the case may be, again refuse to cohabit with the petitioner, the respondent shall be taken to have finally deserted or repudiated the petitioner;

Procedure on expiration of adjournment.

Interrogat on of respondent.

and the Judge shall, by a decree under his hand and sealed with the seal of his Court, declare that the marriage between the parties is dissolved.

Decree.

17. If the respondent be a male and in answer to the interrogatories of the Judge or commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall adjourn the case for a year.

Decree in case of male respondent refusing to cohabit on grounds of petitioner's change of religion.

At the expiration of such adjournment, the petitioner shall again appear in Court; and if the respondent on being interrogated by the Judge or commissioners, as the case may be, again refuse to cohabit with the petitioner, the Judge shall thereupon pass such a decree as last aforesaid:

Provided that, if the petitioner shall so desire (but not otherwise), the proceedings in the suit shall, *mutatis mutandis*, be the same as in the case of a female respondent.

Proviso.

18. Notwithstanding anything hereinbefore contained, if it shall appear at any stage of the suit that both or either of the parties had not attained puberty at the date of their marriage, and that such marriage has not been consummated, and if, in answer to the interrogatories made pursuant to section 13 of this Act, the respondent shall refuse to cohabit with the petitioner, and allege, as the ground for such refusal, that the petitioner has changed his or her religion, the Judge shall thereupon pass such a decree as last aforesaid.

Decree if respondent so refuse in case of unconsummated marriage, either party being *impubes* at time of marriage.

Liberty to parties to marry again.

19. When any decree dissolving a marriage shall have been passed under the provisions of this Act, it shall be as lawful for the respective parties thereto to marry again as if the prior marriage had been dissolved by death, and the issue of any such re-marriage shall be legitimate, any Native law to the contrary notwithstanding:

Provided always that no minister of religion shall be compelled to solemnize the marriage of any person whose former marriage may have been dissolved under this Act, or shall be liable to any suit or penalty for refusing to solemnize the marriage of any such person.

Judge to order commission to issue for examination of exempted persons.

20. In suits instituted under this Act, the Judge shall order a commission to issue to such persons, whether males or females, or both, as he shall think fit, for the examination on interrogatories or otherwise of any persons so exempt as aforesaid.

The provisions of the Code of Civil Procedure shall, so far as practicable, apply to commissions issued under this section.

Proof of marriage and desertion or repudiation of petitioner in consequence of conversion.

21. At any stage of a suit instituted under this Act, cohabitation as man and wife shall be sufficient presumptive evidence of the marriage of the parties, and proof of the respondent's refusal or voluntary neglect to cohabit with the petitioner, after his or her change of religion and after knowledge thereof by the respondent, shall be sufficient evidence of the respondent's desertion or repudiation of the petitioner, and shall also be sufficient evidence that such desertion or repudiation was in consequence of the petitioner's change of religion, unless some other sufficient cause for such desertion or repudiation be proved by the respondent.

Civil Procedure Code applied.

22. The provisions of the Code of Civil Procedure as to the summoning and examination of witnesses shall apply in suits instituted under this Act.

Dismissal of suit if either party under age required by Act, or if parties cohabiting, or respondent willing to cohabit.

23. If at any stage of the suit it be proved that the male party to the suit is or was at the institution thereof under the age of sixteen years, or that the female party to the suit is or was at the same time under the age of thirteen years, or that the petitioner and the respondent are cohabiting as man and wife, or the Court is satisfied by the evidence adduced that the respondent is ready and willing so to cohabit with the petitioner, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

Revival of suit after such dismissal.

24. If, at any time within twelve months after a decree dismissing the suit upon any of the grounds mentioned in the last preceding section, the respondent again desert or repudiate the petitioner upon the ground of his or her change of religion, the suit may be revived by summoning the respondent; and, upon proof of the former decree and of such renewed repudiation or desertion, the suit shall re-commence at the stage at which it had arrived immediately before the passing of such decree;

and after the proofs, interrogations, interview and adjournment which may then be requisite under the provisions hereinbefore contained, the Judge shall pass a decree of the nature mentioned in section 16 of this Act.

Petitioner's cruelty or adultery to bar suit.

25. If at any stage of the suit it be proved that the respondent has deserted or repudiated the petitioner solely or partly in consequence of the petitioner's cruelty or adultery, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

A suit dismissed under this section shall not be revived.

Male petitioner's cohabitation with one of several wives to bar suit.

26. If the petitioner, being a male, has at the time of the institution of the suit two or more wives, he shall make them all respondents; and if at any stage of the suit it be proved that he is cohabiting with one of such wives as man and wife, or that any one of such wives is ready and willing so to cohabit with him, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

The provisions as to revival contained in section 24 of this Act shall apply, *mutatis mutandis*, to a suit dismissed under this section.

Dissolution of marriage not to affect status or right of children.

27. A dissolution of marriage under the provisions of this Act shall not operate to deprive the respondent's children (if any) by the petitioner of their status as legitimate children or of any right or interest which they would have had, according to the Native law applicable to them, by way of maintenance, inheritance or otherwise, in case the marriage had not been so dissolved as aforesaid.

Power to Court to award alimony.

28. If a suit be commenced under the provisions of this Act, and it appear to the Court that the wife has not sufficient separate property to enable her to maintain herself suitably to her station in life and to prosecute or defend the suit, the Court may, pending the suit, order the husband to furnish the wife with sufficient funds to enable her to prosecute or defend the suit and also for her maintenance pending the suit.

If the suit be brought by a husband against a wife, the Court may by the decree order the husband to make such allowance to his wife for her maintenance during the remainder of her life as the Court shall think just, and having regard to the condition and station in life of the parties.

Any allowance so ordered shall cease from the time of any subsequent marriage of the wife.

No appeal under Act; but Judge may state case raising question whether conversion has dissolved marriage.

29. No appeal shall lie against any order or decree made or passed by any Court in any suit instituted under this Act; but if, at any stage of the suit, the respondent shall allege by way of defence that the marriage between the parties has been dissolved by the conversion of the petitioner, and that consequently the petitioner is not a Native husband or a Native wife (as the case may be) within the meaning of this Act, the Judge, if he shall entertain any doubt as to the validity of such

defence, shall either of his own motion or on the application of the respondent, state the case and submit it with his own opinion thereon for the decision of the High Court.

Case to state necessary facts and documents, and suit to be stayed.

30. Every such case shall concisely set forth such facts and documents as may be necessary to enable the High Court to decide the questions raised thereby, and the suit shall be stayed until the judgment of such Court shall have been received as hereinafter provided.

Case to be decided by three Judges.

31. Every such case shall be decided by at least three Judges of the High Court, if such Court be the High Court at any of the presidency-towns; and the petitioner and respondent may appear and be heard in the High Court in person or by advocate or vakil.

High Court may refer case to Judge for additions or alterations.

32. If the High Court shall not be satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the High Court may refer the case back to the Judge by whom it was stated, to make such additions thereto or alterations therein as the High Court may direct in that behalf.

High Court may decide question raised, and Judge shall dispose of case accordingly.

33. It shall be lawful for the High Court, upon the hearing of any such case, to decide the questions raised thereby, and to deliver its judgment thereon containing the grounds on which such decision is founded;

and it shall send to the Judge by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Judge shall, on receiving the same, dispose of the case conformably to such judgment.

Saving of Roman Catholic marriages.

34. Nothing contained in this Act [1] * * * * * * shall be taken to render invalid any marriage of a Native convert to Roman Catholicism if celebrated in accordance with the rules, rites, ceremonies and customs of the Roman Catholic Church [1] * * * * * *.

Extent of Act.

35. This Act shall extend to all the territories that are or shall become vested in Her Majesty or Her successors by the [2] Statute 21 & 22 Vict., cap. 106, entitled "An Act for the better government of India," except the Settlement of Prince of Wales' Island, Singapore and Malacca [3] * * * * *.

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[1] The words and figures, "or in Acts Nos. XXV of 1864 and V of 1865" and the words "and no Clergyman of such Church shall be liable to any suit or penalty under the provisions of either of the two Acts last hereinbefore mentioned, for solemnizing any such marriage," were repealed by the Repealing Act, 1874 (16 of 1874).

[2] For "the Government of India Act, 1858" (21 & 22 Vict., c. 106), *see* Coll. Stats., Ind., Vol. II.

[3] The remainder of this section, dealing with the power of the Governor General in Council to extend the Act, etc., was repealed by the Repealing Act, 1874 (16 of 1874).

THE FIRST SCHEDULE.

(*See section 7.*)

FORM OF PETITION.

Stamp
* *[1]

To the Judge of the Civil Court of
The day of 18

The petition of *A. B.* of
Sheweth :—

1. That your petitioner was born on or about the day of 18 .
2. That your petitioner was on the day of in the year 18 lawfully married to *C. D.* at .
3. That the said *C. D.* is now of the age of years or thereabouts.
4. That after his said marriage, your petitioner lived and cohabited with his said wife at aforesaid until the day of 18 .
5. That previous to the day of 18 your petitioner changed his religion for Christianity, and that on such day he was baptised and became a member of the Church of .
6. That on the day of 18 [*at least six months prior to the date of the petition*], the said *C. D.* deserted your petitioner, and has not since resumed cohabitation with him.
7. That such desertion was in consequence of your petitioner's said change of religion.
8. That there is no collusion nor connivance between your petitioner and the said *C. D.*

Your petitioner therefore prays that Your Honour will order the said *C. D.* to live and cohabit with your petitioner, or declare that your petitioner's marriage is dissolved.

A. B.

Form of verification.

I, A. B., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

THE SECOND SCHEDULE.

(*See section 9.*)

FORM OF CITATION IN ORDINARY CASES.

To *C. D.* of

Whereas *A. B.* of , claiming to have been lawfully married to you, the said, *C. D.*, has filed his [*or* her] petition against you in the Civil Court of , alleging that you, the said *C. D.*, have deserted him [*or* her] for six months in consequence of his [*or* her] having changed his [*or* her] religion for Christianity and praying that, unless you consent to live and cohabit with him [*or* her], it may be declared that his [*or* her] marriage is dissolved : Now this is to command you that, at the expiration of days [*at least one month*] from the date of the service of this on you, you do appear in the said Court then and there to make answer to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

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[1] The words " Rs. two " printed below the word "stamp " were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

And take notice that in default of your so appearing, you will be liable to punishment under section 174 of the [1]Indian Penal Code. XLV of 1860

Dated the day of 18 .

(*Signed*) *E. F.*,

Judge of the Civil Court of

(*Indorsement to be made after service.*)

This citation was duly served by *G. H.* on the within-named *C. D.* of at on the day of 18 .

(*Signed*) *G. H.*

THE THIRD SCHEDULE.

(*See section 9.*)

FORM OF CITATION IN CASE OF RESPONDENT EXEMPT FROM APPEARANCE IN COURT.

To *C. D.* of

Whereas *A. B.* of , claiming to have been lawfully married to you, the said *C.D.*, has filed his [*or* her] petition against you in the Civil Court of , alleging that you, the said *C. D.*, have deserted him [*or* her] for six months in consequence of his [*or* her] having changed his [*or* her] religion for Christianity, and praying that, unless you consent to cohabit with him [*or* her], it may be declared that his [*or* her] marriage is dissolved : Now this is to command you that, at the expiration of days [*at least one month*] from the service of this on you, you do hold yourself in readiness to answer and do answer such interrogatories as may be put to you by commissioners duly authorized in that behalf under a commission issued by this Court in reference to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

And take notice that, in default of your so holding yourself in readiness and answering such interrogatories, you will be liable to punishment under section 174 of the Indian Penal Code [1]. XLV of 1860

Dated the day of 18 .

(*Signed*) E. F.,

Judge of the Civil Court of

(*Indorsement to be made after service*).

This citation was duly served by *G. H.* on the within-named *C. D.* of at on the day of 18 .

(*Signed*) *G. H.*

ACT No. XXV OF 1866.[2]

[*11th July, 1866.*]

An Act to transfer to the Government of India certain securities

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[1] *Supra.*

[2] Short title, " The Unclaimed Deposits Act, 1866." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

[2] Short title, " The Unclaimed Deposits Act, 1866." *See* the Indian Short Titles Act, 25 of 1866, *see* Gazette of India, 1866, p. 890 and for Proceedings in Council relating to the Bill, *see ibid*, Supplement, p. 304.

and moneys deposited in the High Courts of Judicature at Fort William, Madras and Bombay [1] * * *.

Preamble.

WHEREAS it is expedient that certain securities and sums of money deposited in the High Courts of Judicature at Fort William, Madras and Bombay, [1] * * * in the course of suits in the said Courts or in the late Supreme Courts at Calcutta, Madras and Bombay, respectively, and now or hereafter appearing to have been in such deposit for a period of twenty years or upwards, without any claim thereto having been made and allowed during that period, should be transferred and paid to the Government of India for the general purposes of Government; [1] * * * * * It is hereby enacted as follows:—

Money deposited in High Courts and unclaimed for twenty years transferred to Government.

1. All securities and sums of money deposited in the said High Courts [1] * * * or any of them, in the course of suits in any of the said Courts or of the late Supreme Courts of Calcutta, Madras and Bombay, and now or hereafter appearing to have been in such deposit for a period of twenty years or upwards, without any claim thereto having been made and allowed during that period, shall be transferred and paid to the Government of India for the general purposes of Government.

2. [*Proceeds of estates administered under order of Supreme Court of Straits Settlements or in charge of Administrator General of Bengal.*] *Rep. by the Administrator General's Act, 1867 (XXIV of 1867), and the Repealing Act, 1874 (XVI of 1874).*

Transfer not made pending suits.

3. Nothing in this Act shall authorize any transfer or payment of any such securities, sums of money or proceeds as aforesaid, pending any suit already instituted or which shall hereafter be instituted in respect thereof.

Repayment on subsequent establishment of claim.

4. If any claim shall hereafter be made to any part of the securities, money or proceeds which shall be transferred and paid to the Government of India under the provisions of this Act, and if such claim shall, in the case of securities and money transferred and paid under section 1 of this Act, be established to the satisfaction of the High Court [1] * * * from which the transfer shall have been made, [1] * * * the Government of India shall pay to the claimant the amount of the principal so transferred and paid as aforesaid, or so much thereof as shall appear to be due to the [2] claimant [1] * * * * * * *.

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[1] The portions of this Act which referred to the Administrator General of Bengal, which were repealed by the Administrator General's Act, 1867 (24 of 1867), and the Repealing Act, 1876 (12 of 1876), and those which referred to the Supreme Court of the Straits Settlements, which were repealed by the Repealing Act, 1874 (16 of 1874), and by Act 12 of 1876, have been omitted.

[2] As to the costs of petitions under this section, *see* the Unclaimed Deposits Act, 1870 (5 of 1870), Genl. Acts, Vol. II.

THE INDIAN TRUSTEES ACT, 1866.

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ACT No. XXVII OF 1866 [1].

[*24th October, 1866.*]

An Act to consolidate and amend the law relating to the conveyance and transfer of property in British India vested in Mortgagees and Trustees, in cases to which English law is applicable.

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to the conveyance and transfer of moveable and immoveable property in British India vested in mortgagees and trustees, in cases to which English law is applicable; It is hereby enacted as follows:—

1. [*Repeal of Act.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

Interpretation-clause

2.[2] In this Act, unless there be something repugnant in the subject or context,—

"Immove-

"Immoveable property" shall extend to and include messuages,

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[1] The Statement of Objects and Reasons for the Bill which was passed into law as Act 27 of 1866 is not published; for discussions on the Bill, *see* Gazette of India, 1866, Supplement, pp. 416, 417, 494 and 531.

This Act is mainly founded on "the Trustee Act, 1850" (13 & 14 Vict., c. 60), and "the Trustee Act, 1852" (15 & 16 Vict., c. 55).

In the North-West Frontier Province, the Chief Court of the Punjab is the High Court in respect of Proceedings under this Act, *see* s. 6 (*c*) of the North-West Frontier Province Law and Justice Regulation, 1901 (7 of 1901), Punj. & N.-W. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum. *See* Gazette of India, 1881, Pt. I. p. 504.

Its application in Upper Burma generally is barred by the Burma Laws Act, 1898 (13 of 1898), s. 4 (*2*), Bur. Code; in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (1 of 1890), Bal. Code; in the Angul District by the Angul District Regulation, 1894 (1 of 1894); in the Santhal Parganas by the Santhal Parganas Settlement Regulation, 1872 (3 of 1872), Ben. Code, Vol. I; in the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (1 of 1900), E. B. & A. Code, Vol. 1; in the Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (9 of 1874), and in Upper Tanawal (Hazara District) by the Hazara (Upper Tanawal) Regulation, 1900 (2 of 1900), Punj. & N.-W. Code.

[2] *Cf.* 13 & 14 Vict., c. 60, s. 2.

tenements, and hereditaments, corporeal and incorporeal, of every tenure or description, whatever may be the estate or interest therein: able property."

[1] "stock" shall mean any fund, annuity or security transferable in books kept by any company or society established or to be established, or transferable by deed alone, or by deed accompanied by other formalities, and any share or interest therein. It shall also include shares in ships registered under the [2] Merchant Shipping Act, 1854, or at any port in British India: "Stock." 17 & 18 Vict., c. 104.

"hold" and "holding" shall be applicable to any vested estate, whether for life or of a greater or less description, in possession, futurity or expectancy in any immoveable property: "Hold" and "holding."

"contingent right" as applied to immoveable property shall mean a contingent or executory interest, or possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility be or be not ascertained; also a right of entry, whether immediate or future, and whether vested or contingent: "Contingent right."

"convey" and "conveyance," applied to any person, shall mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another immoveable property which such person holds, or in which he is entitled to a contingent right, either for the whole estate of the person conveying or disposing, or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance, including the acts to be performed by married women and tenants in tail in accordance with the provisions of [3] Act XXXI of 1854 (*to simplify the modes of conveying land in cases to which the English Law is applicable*): "Convey." "Conveyance." XXXI of 1854.

"transfer" shall mean the execution and performance of every deed and act by which a person entitled to stock or Government securities can transfer such stock or Government securities from himself to another: "Transfer."

"High Court" shall mean every Court now or hereafter established under the [4] Statute 24 and 25 Vict., cap. 104, and also the Chief Court of the Punjab,[5] [and the Chief Court of Lower Burma] or such one or more Judges of the said Courts respectively as shall be appointed by "High Court." 24 & 25 Vict., c. 104.

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[1] *Cf.* "the Merchant Shipping Act Amendment Act, 1855" (18 & 19 Vict., c 91), s. 10. This Act has been since repealed by the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), s. 745, Coll. Stats., Ind., Vol. II.

[2] Coll. Stats., Ind., Vol. I.

[3] *See supra.*

[4] *See* "the Indian High Courts Act, 1861" (24 & 25 Vict., c. 104), Coll. Stats., Ind., Vol. II.

Cf. definition of High Court in General Clauses Act, 1897 (10 of 1897), s. 3 (*24*), Genl. Acts, Vol. IV.

[5] These words were inserted in the definition of High Court by the Lower Burma Courts Act, 1900 (6 of 1900), Bur. Code.

the [1] Chief Justice or the senior Judge, as the case may be, to entertain applications and make orders under this Act:

"Trust." "trust" shall not mean the duties incident to an estate conveyed by way of mortgage; but with this exception, the words "trust" and

"Trustee." "trustee" shall extend to and include implied and constructive trusts, and shall extend to and include cases where the trustee has some beneficial estate or interest in the subject of the trust, and shall extend to and include the duties incident to the office of executor or administrator of a deceased person:

"Lunatic." "lunatic" shall mean any person who shall have been found by due course of law to be of unsound mind and incapable of managing his affairs:

"Person of unsound mind." "person of unsound mind" shall mean any person not a minor who, not having been found to be a lunatic, shall be incapable from infirmity of mind to manage his own affairs:

"Heir" and "devisee." in the case of a will made or an intestacy occurring before the [2] first day of January, 1866, "heir" shall mean the person claiming an interest in the immoveable property of a deceased person under the laws concerning descent applicable to such property: and "devisee" shall, in addition to its ordinary signification, mean the heir of a devisee and the devisee of an heir, and generally any person claiming an interest in the immoveable property of a deceased person, not as heir of such deceased person, but by a title dependent solely upon the operation of the laws concerning devise and descent.

In the case of a will made or an intestacy occurring on or after the [2] first day of January, 1866, "heir" shall mean any person claiming an interest in the immoveable property of a deceased person under the rules for the distribution of an intestate's estate; and "devisee" shall mean any person taking immoveable property under a bequest, and any person other than an executor or administrator, claiming an interest in immoveable property, not as entitled thereto under the said rules, but by a title dependent solely upon the operation of the laws concerning intestate and testamentary succession:

"Mortgage." "mortgage" shall be applicable to every estate or interest in immoveable or moveable property which would in the High Court be deemed merely a security for money:

"Person." "person" shall include any company or association, or body of persons whether incorporated or not:

Number. Gender. Words importing the singular number only shall extend to several persons or things; words importing the plural number shall apply to

[1] *See* as to the Punjab, the Punjab Courts Act, 1884 (18 of 1884), s. 5, Punj. & N.-W. Code.

[2] The day on which the Indian Succession Act, 1865 (10 of 1865), came into force. The Act is printed *supra*.

one person or thing; words importing the masculine gender shall extend to a female.

High Court to have jurisdiction in what cases.

3. The powers and authorities given by this Act to the High Court shall and may be exercised only in cases to which English law is applicable, and may be exercised with respect to property within the local limits of the extraordinary original civil jurisdiction of the said Courts respectively.

High Court may convey estates of lunatic trustees and mortgagees;

4.[1] When any lunatic or person of unsound mind shall hold any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order that such property be vested in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a conveyance of the property in the same manner for the same estate.

and may convey contingent rights.

5.[2] When any lunatic or person of unsound mind shall be entitled to any contingent right in any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said High Court shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a deed so releasing or disposing of the contingent right.

High Court may transfer stock or Government securities of lunatic-trustees and mortgagees.

6.[3] When any lunatic or person of unsound mind shall be solely entitled to any stock or Government securities or to anything in action upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order vesting in any person or persons the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action or any interest in respect thereof:

and when any person or persons shall be entitled jointly with any lunatic or person of unsound mind to any stock or Government securities or thing in action, upon any trust or by way of mortgage, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any other person or persons the said High Court may appoint.

Power to transfer stock

7.[4] When any stock or Government securities shall be standing in

[1] *Cf.* the Trustee Act, 1850 (13 & 14 Vict., c. 60), s. 3.
[2] *Cf.* the Trustee Act, 1850 (13 & 14 Vict., c. 60), s. 4.
[3] *Cf.* "the Trustee Act, 1850" (13 & 14 Vict., c. 60), s. 5.
[4] *Cf.* 13 & 14 Vict., c. 60, s. 6.

or Government securities of deceased persons.

the name of any deceased person whose executor or administrator is a lunatic or person of unsound mind, or when anything in action shall be vested in any lunatic or person of unsound mind as the executor or administrator of a deceased person, it shall be lawful for the High Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in any person or persons the said Court may appoint.

High Court may convey estates of minor trustees and mortgagees.

8.[1] Whenever any minor[2] shall hold any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order vesting such property in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the minor trustee or mortgagee had attained his majority, and had duly executed a conveyance of the property in the same manner for the same estate.

Contingent rights of minor trustees and mortgagees.

9.[3] Where any minor shall be entitled to any contingent right in any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and the order shall have the same effect as if the minor had attained his majority, and had duly executed a deed so releasing or disposing of the contingent right.

High Court may convey estate of trustee out of jurisdiction of Court.

10.[4] When any person solely holding any immoveable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order vesting such property in such person or persons, in such manner and for such estate as the said Court shall direct, and the order shall have the same effect as if the trustee had duly executed a conveyance of the property in the same manner and for the same estate.

High Court may make order where persons hold immoveable property in trust jointly with persons out of jurisdiction.

11.[5] When any person or persons shall hold any immoveable property in trust jointly with a person not within the jurisdiction of the High Court, or who cannot be found, it shall be lawful for the said Court to make an order vesting the property in the person or persons so jointly holding, or in such last-mentioned person or persons together with any other person or persons, in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance of the property in the same manner for the same estate.

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[1] *Cf.* 13 & 14 Vict., c. 60, s. 7.

[2] For definition of minor, *see* the Indian Majority Act, 1875 (9 of 1875), Genl. Acts, Vol. II.

[3] *Cf.* 13 & 14 Vict., c. 60, s. 8.

[4] *Cf.* 13 & 14 Vict., c. 60, s. 9.

[5] *Cf.* 13 & 14 Vict., c. 60. s. 10.

Contingent rights of trustees.

12.[1] When any person solely entitled to a contingent right in any immoveable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and the order shall have the same effect as if the trustee had duly executed a conveyance so releasing or disposing of the contingent right.

High Court may make order where persons jointly entitled with others out of jurisdiction to contingent right in immoveable property.

13.[2] When any person jointly entitled with any other person or persons to a contingent right in any immoveable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order disposing of the contingent right of the person out of the jurisdiction, or who cannot be found, to the person or persons so jointly entitled as aforesaid, or to such last-mentioned person or persons together with any other person or persons; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance so releasing or disposing of the contingent right.

When uncertain which of several trustees survived.

14.[3] Where there shall have been two or more persons jointly holding any immoveable property upon any trust, and it shall be uncertain which of such trustees was the survivor, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the survivor of such trustees had duly executed a conveyance of the property in the same manner for the same estate.

When uncertain whether last trustee living or dead.

15.[4] Where any one or more person or persons shall have held any immoveable property upon any trust, and it shall not be known, as to the trustee last known to have held such property, whether he be living or dead, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate, as the said Court shall direct; and the order shall have the same effect as if the last trustee had duly executed a conveyance of the property in the same manner for the same estate.

When trustee dies without heir.

16.[5] When any person holding any immoveable property upon any trust shall have died intestate as to such property without an heir, or shall have died, and it shall not be known who is his heir or devisee, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate, as

[1] *Cf.* 13 & 14 Vict., c. 60, s. 11.
[2] *Cf.* 13 & 14 Vict., c. 60, s. 12.
[3] *Cf.* 13 & 14 Vict., c. 60, s. 13.
[4] *Cf.* 13 & 14 Vict., c. 60, s. 14.
[5] *Cf.* 13 & 14 Vict., c. 60, s. 15.

the said Court shall direct; and the order shall have the same effect as if the heir or devisee of such trustee had duly executed a conveyance of the property in the same manner for the same estate.

Contingent right of unborn trustee.

17.[1] When any immoveable property is subject to a contingent right in an unborn person, or class of unborn persons, who, upon coming into existence, would in respect thereof hold such property upon any trust, it shall be lawful for the High Court to make an order which shall wholly release and discharge such property from such contingent right in such unborn person or class of unborn persons, or to make an order which shall vest in any person or persons the estate or estates which such unborn person or class of unborn persons would, upon coming into existence, hold in such property.

Power to make order for vesting estate on refusal or neglect of trust to convey or release.

18.[2] In every case where any person holds or shall hold jointly or solely any immoveable property, or is or shall be entitled to a contingent right therein upon any trust, and a demand shall have been made upon such trustee by a person entitled to require a conveyance of such property, or a duly authorized agent of such last-mentioned person, requiring such trustee to convey the same, or to release such contingent right, it shall be lawful for the High Court, if the said Court shall be satisfied that such trustee has wilfully refused or neglected to convey the said property for the space of twenty-eight days after such demand, to make an order vesting such property in such person or persons, in such manner and for such estate, as the Court shall direct, or releasing such contingent right in such manner as the Court shall direct; and the said order shall have the same effect as if the trustee had duly executed a conveyance of the property, or a release of such right, in the same manner and for the same estate.

Power to convey in place of mortgagee.

19.[3] When any person to whom any immoveable property has been conveyed by way of mortgage shall have died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of such mortgage shall have been paid to a person entitled to receive the same, or such last-mentioned person shall consent to an order for the re-conveyance or vesting of such property, then in any of the following cases it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate as the said Court shall direct, that is to say,—

when an heir or devisee of such mortgagee shall be out of the jurisdiction of the High Court, or cannot be found:

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[1] *Cf.* 13 & 14 Vict., c. 60, s. 6.

[2] *Cf.* the Trustee Act, 1852 (15 & 16 Vict., c. 55), s. 2. [Sections 1 to 5, and ss. 8 and 9 of this Act, together with the residue, have been repealed, except as to lunacy jurisdiction in Ireland, by (56 & 57 Vict., c. 53), s. 51].

[3] *Cf.* "the Trustee Act, 1850" (13 & 14 Vict., c. 60), s. 19.

when an heir or devisee of such mortgagee shall upon a demand by a person entitled to require a conveyance of such property, or a duly authorized agent of such last-mentioned person, have stated in writing that he will not convey the same, or shall not convey the same for the space of twenty-eight days next after a proper deed for conveying such property shall have been tendered to him by a person entitled as aforesaid, or a duly authorized agent of such last-mentioned person:

when it shall be uncertain which of several devisees of such mortgagee was the survivor:

when it shall be uncertain as to the survivor of several devisees of such mortgagee, or as to the heir of such mortgagee, whether he be living or dead.

when such mortgagee shall have died intestate as to such property and without an heir, or shall have died and it shall not be known who is his heir or devisee:

And the order of the said High Court made in any one of the foregoing cases shall have the same effect as if the heir or devisee, or surviving devisee, as the case may be, had duly executed a conveyance of the property in the same manner and for the same estate.

Power to appoint person to convey in certain cases.

20.[1] In every case where the High Court shall, under the provisions of this Act, be enabled to make an order having the effect of a conveyance of any immoveable property, or having the effect of a release or disposition of the contingent right of any person or persons, born or unborn it shall also be lawful for the High Court, should it be deemed more convenient, to make an order appointing a person to convey such property, or release or dispose of such contingent right;

and the conveyance, or release or disposition of the person so appointed shall, when in conformity with the terms of the order by which he is appointed, have the same effect, in conveying the property, or releasing or disposing of the contingent right, as an order of the High Court would, in the particular case, have had under the provisions of this Act.

In every case where the High Court shall, under the provisions of this Act, be enabled to make an order vesting in any person or persons the right to transfer any stock transferable in the books of any company or society established or to be established, it shall also be lawful for the High Court, if it be deemed more convenient, to make an order directing the secretary or any officer of such company or society at once to transfer or join in transferring the stock to the person or persons to be named in the order;

[1] *Cf.* the Trustee Act, 1850 (13 & 14 Vict., c. 60), s. 20.

and this Act shall be a full and complete indemnity and discharge to all companies or societies and their officers and servants for all acts done or permitted to be done pursuant thereto.

When trustees of stock or Government securities joined with trustees out of jurisdiction.

21.[1] When any person or persons shall be jointly entitled with any person out of the jurisdiction of the High Court, or who cannot be found, or concerning whom it shall be uncertain whether he be living or dead, to any stock or Government securities or thing in action upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for or recover such thing in action or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any person or persons the said Court may appoint.

When any sole trustee of any stock, Government securities or thing in action shall be out of the jurisdiction of the said Court, or cannot be found, or it shall be uncertain whether he be living or dead, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in any person or persons the said Court may appoint.

When trustee of stock, etc., refuses to transfer.

22.[2] Where any sole trustee of any stock, Government securities or thing in action shall neglect or refuse to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for or recover such thing in action, or any interest in respect thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person absolutely entitled thereto, it shall be lawful for the High Court to make an order vesting the sole right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in such person or persons as the said Court may appoint.

When one of several trustees of stock, etc., refuses to transfer or receive and pay over dividends.

23.[3] Where any one of the trustees of any stock, Government securities or thing in action shall neglect or refuse to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for or recover such thing in action according to the direction of the person, absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by such person, it shall be lawful for the High

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[1] *Cf.* 13 & 14 Vict., c. 60. s. 22.
[2] *Cf.* " the Trustee Act, 1850 " (13 & 14 Vict., c. 60), s. 23.
[3] *Cf.* 13 & 14 Vict., c. 60, s. 24.

Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, in the other trustee or trustees of the said stock, Government securities or thing in action, or in any person or persons whom the said Court may appoint jointly with such other trustee or trustees.

When stock, etc., standing in name of deceased person.

24.[1] When any stock or Government securities shall be standing in the sole name of a deceased person, and his executor or administrator shall be out of the jurisdiction of the High Court, or cannot be found, or it shall be uncertain whether such executor or administrator be living or dead, or such executor or administrator shall neglect or refuse to transfer such stock or Government securities, or receive the dividends, interest or income thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person entitled as aforesaid, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, in any person or persons whom the said Court may appoint.

Effect of order vesting legal right to transfer stock, etc.

25.[2] Where any order shall have been made under this Act vesting the right to any stock or Government securities in any person or persons appointed by the High Court, such legal right shall vest accordingly, and thereupon the person or persons so appointed are hereby authorized and empowered to execute all deeds and powers-of-attorney, and to perform all acts relating to the transfer of such stock and Government securities into his or their own name or names or otherwise, or relating to the receipt of the dividends, interest or income thereof, to the extent and in conformity with the terms of such order.

Obligation to comply with requisitions of person invested.

All companies and associations whatever, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such companies, associations or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made, and shall be equally indemnified in complying with the requisition of such person or persons so appointed as they would have been indemnified in complying with the requisition of the person in whose place such appointment shall have been made.

Indemnity.

Termination of powers of person replaced.

After notice in writing of any such order of the High Court concerning any stock or Government securities shall have been given, it shall not be lawful for any company or association, or any person having re-

[1] *Cf.* 13 & 14 Vict., c. 60, s. 25.
[2] *Cf.* " the Trustee Act, 1850 " (13 & 14 Vict., c. 60), s. 26.

ceived such notice, to act upon the requisition of the person in whose place an appointment shall have been made, in any matter relating to the transfer of such stock or Government securities, or the payment of the dividends, interest or income thereof.

Effect of order vesting legal right in thing in action.

26.[1] Where any order shall have been made under this Act by the High Court vesting the legal right to sue for or recover anything in action, or any interest in respect thereof, in any person or persons, such legal right shall vest accordingly; and thereupon it shall be lawful for the person or persons so appointed, to carry on, commence and prosecute, in his or their own name or names, any suit or other proceeding for the recovery of such thing in action, in the same manner in all respects as the person in whose place an appointment shall have been made could have sued for or recovered such thing in action.

On neglect to transfer stock, etc., for twenty-eight days, order made vesting right to transfer in such person as Court appoints.

27.[2] Where any person shall neglect or refuse to transfer any stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for or recover anything in action, or any interest in respect thereof, for the space of twenty-eight days next after an order of the High Court for that purpose shall have been served upon him, it shall be lawful for the said Court to make an order vesting all the right of such person to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in such person or persons as the said Court may appoint.

Similar order on like neglect by executor.

28.[3] When any stock or Government securities shall be standing in the sole name of a deceased person, and his executor or administrator shall refuse or neglect to transfer such stock or Government securities, or receive the dividends, interest or income thereof for the space of twenty-eight days next after an order of the High Court for that purpose shall have been served upon him, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, in any person or persons whom the said Court may appoint.

Legal right to transfer stock to vest in person appointed by High Court.

29.[4] When any order being or purporting to be under this Act shall be made by the High Court, vesting the right to any stock or Government securities, or vesting the right to transfer any stock or Government securities, or vesting the right to call for the transfer of any stock or Government securities in any person or persons, in every such case the legal right to transfer such stock or Government securities shall vest accordingly;

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[1] *Cf.* 13 & 14 Vict., c. 60, s. 27.
[2] *Cf.* the Trustee Act, 1852 (15 & 16 Vict., c. 55), s. 4.
[3] *Cf.* the Trustee Act, 1852 (15 & 16 Vict., c. 55), s. 5.
[4] *Cf.* the Trustee Act, 1852 (15 & 16 Vict., c. 55), s. 6.

and the person or persons so appointed shall be authorized and empowered to execute all deeds and powers-of-attorney, and to perform all acts relating to the transfer of such stock or Government securities into his or their own name or names or otherwise, to the extent and in conformity with the terms of the order.

Powers of person appointed.

All companies and associations, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such companies, associations or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made.

Obligation to comply with his requisitions.

30.[1] When any minor shall be solely entitled to any stock or Government securities upon any trust it shall be lawful for the High Court to make an order vesting in any person or persons the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof.

Power to make order for transfer, or receipt of dividends, of stock, etc., in name of minor's trustee.

When any minor shall be entitled jointly with any other person or persons to any stock or Government securities, upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof either in the person or persons jointly entitled with the minor, or in him or them together with any other person or persons the said Court may appoint.

31.[2] When a decree or order shall have been made by the High Court directing the sale of any immoveable property for the payment of the debts of a deceased person, every person holding such property, or entitled to a contingent right therein, as heir, or under the will of such deceased debtor, shall be deemed so to hold or be entitled (as the case may be) upon a trust within the meaning of this Act;

When decree made for sale of immoveable property for payment of debts.

and the High Court is hereby empowered to make an order wholly discharging the contingent right, under the will of such deceased debtor, of any unborn person.

32.[3] When any decree or order shall have been made by the High Court whether before or after the passing of this Act, directing the sale of any immoveable property for any purpose whatever, every person holding such property, or entitled to a contingent right therein being a party to the suit or proceeding in which such decree or order shall have been made, and bound thereby, or being otherwise bound by such

Holding immoveable property the sale of which has been ordered by High Court.

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[1] *Cf.* the Trustee Act, 1852 (15 & 16 Vict., c. 55), s. 3.

[2] *Cf.* the Trustee Act, 1850 (13 & 14 Vict., c. 60), s. 29. S. 31 is repealed in places to which the Transfer of Property Act, 1882 (4 of 1882), extends or is extended—*see* s. 2 of latter Act.

[3] *Cf.* the Trustee Act, 1852 (15 & 16 Vict., c. 55), s. 1.

decree or order, shall be deemed so to hold or be entitled (as the case may be) upon a trust within the meaning of this Act.

Order for vesting estate in lieu of conveyance by party to suit in order to carry out sale.

In every such case it shall be lawful for the High Court, if the said Court shall think it expedient for the purpose of carrying such sale into effect, to make an order vesting such property or any part thereof, for such estate as the Court shall think fit, either in any purchaser or in such other person as the Court shall direct.

Effect of order.

Every such order shall have the same effect as if the person so holding or entitled had been free from all disability, and had duly executed all proper conveyances and assignments of such property for such estate.

Court to declare what parties are trustees of immoveable property comprised in suit, and as to interests of persons unborn.

33.[1] Where any decree or order shall be made by the High Court for the specific performance of a contract concerning any immoveable property, or for the partition or exchange of any immoveable property, or generally when any decree shall be made for the conveyance of any immoveable property, either in cases arising out of the doctrine of election or otherwise, it shall be lawful for the said Court to declare that any of the parties to the said suit wherein such decree is made are trustees of such property, or any part thereof, within the meaning of this Act, or to declare concerning the interests of unborn persons who might claim under any party to the said suit, or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transactions concerning which such decree is made, that such interests of unborn persons are the interests of persons who, upon coming into existence, would be trustees within the meaning of this Act.

Thereupon it shall be lawful for the High Court to make such order or orders as to the estates, rights and interests of such persons, born or unborn, as the said Court might, under the provisions of this Act, make concerning the estates, rights and interests of trustees born or unborn.

Power to direct how right to transfer stock shall be exercised.

34.[2] It shall be lawful for the High Court to make declarations and give directions concerning the manner in which the right to any stock, Government securities or thing in action vested under the provisions of this Act shall be exercised, and thereupon the person or persons in whom such right shall be vested shall be compellable to obey such directions and declarations by the same process as that by which other orders under this Act are enforced.

Power to Court to make order appointing new trustees.

35.[3] In all cases in which it shall be expedient to appoint a new trustee or new trustees, and it shall be found inexpedient, difficult or impracticable so to do without the assistance of the High Court, it shall be lawful for the said Court to make an order appointing a new trustee

[1] *Cf.* the Trustee Act, 1850 (13 & 14 Vict., c. 60), s. 30.
[2] *Cf.* the Trustee Act, 1850 (13 & 14 Vict., c. 60), s. 31.
[3] *Cf.* the Trustee Act, 1850 (13 & 14 Vict., c. 60), s. 32.

or new trustees, whether there be any existing trustee or trustees or not at the time of making such order, and, if there be such trustee or trustees, either in substitution for or in addition to him or them.

Powers of new trustees.

[1] The person or persons who upon the making of such order shall be trustee or trustees shall have the same rights and powers as he or they would have had if appointed by decree in a suit duly instituted.

Power to Court to vest immoveable property in new trustee.

36.[2] It shall be lawful for the High Court, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order, to direct that any immoveable property subject to the trust shall vest in the person or persons who upon the appointment shall be the trustee or trustees, for such estate as the Court shall direct.

Such order shall have the same effect as if the person or persons who, before such order, was or were the trustee or trustees (if any) had duly executed all proper conveyances of such property for such estate.

Power to Court to vest right to sue in new trustee.

37.[3] It shall be lawful for the High Court, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order, to vest the right to call for a transfer of any stock or Government securities subject to the trust, or to receive the dividends, interest or income thereof, or to sue for or recover anything in action subject to the trust, or any interest in respect thereof, in the person or persons who upon the appointment shall be the trustee or trustees.

Old trustees not discharged from liability.

38.[4] Any such appointment by the High Court of new trustees, and any such conveyance or transfer as aforesaid, shall operate no further or otherwise as a discharge to any former or continuing trustee, than an appointment of new trustees under any power for that purpose contained in any instrument would have done.

Who may apply.

39.[5] An order under any of the hereinbefore contained provisions, for the appointment of a new trustee or new trustees, or concerning any immoveable property, stock or Government securities, or thing in action subject to a trust, may be made upon the application of any person beneficially interested in such immoveable property, stock, Government securities or thing in action, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof, and an order under any of the provisions hereinbefore contained, concerning any immoveable property, stock, Government securities or thing in action subject to a mortgage, may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the moneys secured by such mortgage.

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[1] *Cf.* the Trustee Act, 1850 (13 & 14 Vict., c. 60), s. 33.
[2] *Cf.* the Trustee Act, 1850 (13 & 14 Vict., c. 60), s. 34.
[3], [4] & [5] *Cf.* the Trustee Act, 1850 (13 & 14 Vict., c. 60), ss. 34, 36 and 37, respectively.

Application may be by petition.

40.[1] When any person shall deem himself entitled to an order under any of the provisions hereinbefore contained, it shall be lawful for him to present a petition to the High Court for such order as he may deem himself entitled to, and he may give evidence by affidavit or otherwise in support of such petition before the said Court; and may serve such person or persons with notice of such petition as he may deem entitled to service thereof.

What may be done upon petition.

41.[1] Upon the hearing of any such petition, it shall be lawful for the said High Court, should it be deemed necessary, to direct a reference to one of the Judges of the Court to inquire into any facts which require such an investigation, or it shall be lawful for the said Court to direct such petition to stand over, to enable the petitioner to adduce evidence or further evidence before the Court, or to enable notice or any further notice of such petition to be served upon any person or persons.

Court may dismiss petition with or without costs.

42.[1] Upon the hearing of any such petition, it shall be lawful for the High Court to dismiss such petition with or without costs, or to make an order thereupon in conformity with the provisions of this Act.

Power to make order in cause.

43.[1] Whensoever in any cause or matter, either by the evidence adduced therein, or by the admissions of the parties, or by report of one of the Judges of the Court, the facts necessary for an order under this Act shall appear to the High Court to be sufficiently proved, it shall be lawful for the said Court, either upon the hearing of the said cause or of any petition or application in the said cause or matter, to make such order under this Act.

Orders by High Court founded on certain allegations conclusive evidence of matter contained therein.

44.[1] Whenever any order shall be made under this Act by the High Court, for the purpose of conveying any immoveable property, or for the purpose of releasing or disposing of any contingent right, and such order shall be founded on an allegation of the personal incapacity of a trustee or mortgagee, or on an allegation that a trustee or the heir or devisee of a mortgagee is out of the jurisdiction of the High Court, or cannot be found, or that it is uncertain which of several trustees, or which of several devisees of a mortgagee, was the survivor, or whether the last trustee, or the heir or last surviving devisee of a mortgagee, be living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir, or has died and it is not known who is his heir or devisee, then in any of such cases the fact that the High Court has made an order upon such an allegation shall be conclusive evidence of the matter so alleged in any Court of Civil Judicature upon any question as to the legal validity of the order:

Powers as to re-conveyance of immove-

Provided always that nothing herein contained shall prevent the High Court directing a re-conveyance of any immoveable property con-

[1] *Cf.* the Trustee Act, 1850 (13 & 14 Vict., c. 60), ss. 40, 41, 42, 43 and 44, respectively.

veyed or assigned by any order under this Act, or a re-disposition of any contingent right conveyed or disposed of by such order; and it shall be lawful for the said Court to direct any of the parties to any suit concerning such property or contingent right to pay any costs occasioned by the order under this Act when the same shall appear to have been improperly obtained. able property, etc.

45.[1] It shall be lawful for the High Court to exercise the powers herein conferred for the purpose of vesting any immoveable property, stock, Government securities or thing in action in the trustee or trustees of any charity or society, over which charity or society the High Court would have jurisdiction upon suit duly instituted, whether such trustee or trustees shall have been duly appointed by any power contained in any deed or instrument, or by the decree of the said Court, or by order made upon a petition to the said Court. Trustee of charity.

46.[1] Where any minor or person of unsound mind shall be entitled to any money payable in discharge of any immoveable property, stock, Government securities or thing in action conveyed or transferred under this Act, it shall be lawful for the person by whom such money is payable to pay the same into the High Court, in trust in any cause then depending concerning such money, or, if there shall be no such cause, to the credit of such minor or person of unsound mind, subject to the order or disposition of the said Court; Money of minors and persons of unsound mind to be paid into Court.

and it shall be lawful for the said Court, upon petition in a summary way, to order any money so paid to be invested in Government securities, and to order payment or distribution thereof, or payment of the dividends or interest thereof as to the said Court shall seem reasonable.

47.[1] Where in any suit commenced or to be commenced in the High Court it shall be made to appear to the Court that diligent search and enquiry have been made after any person made a defendant, who is only a trustee, to serve him with the process of the Court, and that he cannot be found, it shall be lawful for the said Court to hear and determine such cause, and to make such absolute decree therein against every person who shall appear to it to be only a trustee, and not otherwise concerned in interest in the matter in question, in such and the same manner as if such trustee had been duly served with the process of the Court, and had appeared at the hearing of such cause: Court may make decree in absence of trustee.

Provided always that no such decree shall bind, affect or in any wise prejudice any person against whom the same shall be made without service of process upon him as aforesaid, his heirs, executors or administrators, for or in respect of any estate, right or interest which such person shall have at the time of making such decree for his own use or benefit, or otherwise than as a trustee as aforesaid. Decree not effective without service of process.

[1] *Cf.* the Trustee Act, 1850 (13 & 14 Vict., c. 60), ss. 45, 48 and 49, respectively.

Orders under Act chargeable with same stamp-duty as deeds of conveyance.

48.[1] Every order to be made under this Act, which shall have the effect of a conveyance of any immoveable property, or a transfer of any such stock, Government securities or thing in action as can only be transferred by stamped deed, or for the transfer of which a stamp is necessary, shall be chargeable with the like amount of stamp duty as it would have been chargeable with if it had been a deed executed or a transfer made by the person or persons holding such property or entitled to such stock, Government securities or thing in action.

Every such order shall be duly stamped for denoting the payment of the said duty.

Costs may be paid out of estate.

49.[2] The High Court may order the costs and expenses of and relating to the petitions, orders, directions, conveyances and transfers to be made in pursuance of this Act, or any of them, to be paid and raised out of or from the immoveable or moveable property or the rents or produce thereof, in respect of which the same respectively shall be made, or in such manner as the said Court shall think proper.

Power to order enquiry concerning person of unsound mind.

50.[3] Upon any petition being presented under this Act to the High Court, concerning a person of unsound mind, it shall be lawful for the said Court to make an order directing an enquiry whether such person is or is not of unsound mind, and incapable of managing himself and his affairs.

Effect of order.

Such order shall have the same effect as the like order made under section 1 of Act XXXIV of 1858[4] (*to regulate proceedings in Lunacy in the Courts of Judicature established by Royal Charter*), and the enquiry directed to be made shall be made in all respects in the manner declared and prescribed for making an enquiry under the last-mentioned Act. XXXIV of 1858.

Postponement of order pending enquiry.

The High Court may postpone making any order upon the petition presented as aforesaid, until any enquiry so directed to be made shall have been finally concluded.

Suit may be directed.

51.[5] Upon any petition under this Act being presented to the High Court it shall be lawful for the said Court to postpone making any order upon such petition until the right of the petitioner shall have been declared in a suit duly instituted for that purpose.

Indemnity to persons obeying orders under Act.

52.[6] Every order made or purporting to be made under this Act by the High Court shall be a complete indemnity to all persons whatsoever for any act done pursuant thereto; and it shall not be necessary for such persons to enquire concerning the propriety of such order, or whether the High Court has jurisdiction to make the same.

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[1] *Cf.* the Trustee Act, 1852 (15 & 16 Vict., c. 55), s. 13 which has since been repealed by the Statute Law Revision Act, 1892.

[2], [3] & [5] *Cf.* the Trustee Act, 1850 (13 & 14 Vict., c. 60), ss. 51, 52 and 53, respectively.

[4] *See supra.*

[6] *Cf.* the Trustee Act, 1852 (15 & 16 Vict., c. 55), s. 7.

53. Any order made by the High Court under this Act shall have the same effect and be executed in the same manner as a decree. Execution and effect of orders.

54. This Act may be cited as the Indian Trustee Act, 1866. Short title.

55. [*Application of Act to Straits Settlements.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

THE TRUSTEES' AND MORTGAGEES' POWERS ACT, 1866.

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ACT No. XXVIII OF 1866 [1].

[*24th October, 1866.*]

An Act to give to Trustees, Mortgagees and others, in cases to which English Law is applicable, certain powers now commonly inserted in Settlements, Mortgages and Wills, and to amend the Law of property and relieve Trustees.

Preamble.

WHEREAS it is expedient that in cases to which English law is applicable certain powers and provisions usually inserted in settlements, mortgages, wills and other instruments should be made incident to the estates of the persons interested, so as to dispense with the necessity of

[1] The Statement of Objects and Reasons of the Bill which was passed into law as Act 28 of 1866 has not been published; for Proceedings in Council relating to the Bill, *see* Gazette of India, 1866, Supplement, pp. 416. 417, 494 and 531.

In the North-West Frontier Province the Chief Court of the Punjab is the High Court in respect of Proceedings under this Act, *see* s. 6 (*c*) of the North-West Frontier Province Laws and Justice Regulation, 1901 (7 of 1901), Punj. & N.-W. Code.

inserting the same in terms in every such instrument, and that in such cases trustees should be relieved; It is enacted as follows:—

Interpretation-clause.

1. In the construction of this Act, unless there be something repugnant in the subject or extent,—

"Immoveable property."

"Immoveable property" shall include land, any benefit to arise

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This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, Genl. Acts, Vol. II.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely:—

West Jalpáiguri, the Western Hills of Dárjiling, the Dárjiling Tarái and the Damson Sub-division of the Dárjiling District . . .	*See* Gazette of India, 1881, Pt. I, p. 74.	
The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhan in the District of Singbhum .	Ditto	1881, Pt. I, p. 504.
The Scheduled Districts in Ganjam and Vizagapatam .	Ditto	1898, Pt. I, p. 870.
The Scheduled portion of the Mirzápur District . .	Ditto	1879, Pt. I, p. 383.
Jaunsar Báwar . . .	Ditto	1879, Pt. I, p. 382.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán and Dera Gházi Khán (*portions of the Districts of Hazára, Bannu, Dera Ismail Khán and Dera Gházi Khán and the Districts of Pesháwar and Kohát, now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and* ibid, *1902, Pt. I, p. 575, but its application to that part of the Hazára District, known as Upper Tanawal, is barred by the Hazára (Upper Tanawal) Regulation, 1900 (2 of 1900), Punj. and N.-W. Code*) .	Ditto	1886, Pt. I, p. 48.
The District of Sylhet . .	Ditto	1879, Pt. I, p. 631.
The rest of Assam (except the North Lushái Hills) . .	Ditto	1897, Pt. I, p. 299.

It has been declared, by notification under s. 3 (*b*) of the same Act, not to be in force in the Scheduled Districts of Lahaul. *See* Gazette of India, 1886, Pt. I, p. 301.

It has been extended, by notification under s. 5 of the last-mentioned Act to the Scheduled Districts of Kumáon and Garhwál. *See* Gazette of India, 1876, Pt. I, p. 606.

This Act is based on "the Law of Property Amendment Act, 1859" (22 & 23 Vict., c. 35), and 23 & 24 Vict., c. 145. This Act has since been repealed by 44 & 45 Vict., c. 41, s. 71, and 45 & 46 Vict., c. 38, s. 64.

out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth:

"mortgage" shall be taken to include every instrument by virtue whereof immoveable property is in any manner conveyed, pledged or charged as security for the repayment of money or money's worth lent, and to be reconveyed or released on satisfaction of the debt: "Mortgage."

"mortgagor" shall be taken to include every person by whom any such conveyance, pledge or charge as aforesaid shall be made: "Mortgagor."

"mortgagee" shall be taken to include every person to whom or in whose favour any such conveyance, pledge or charge as aforesaid is made or transferred: and "Mortgagee."

"High Court" means any Court established or to be established under [1] Statute 24 & 25 Vict., c. 104, and includes the Chief Court of the Punjab [2] * * * [3] [and the Chief Court of Lower Burma]. "High Court."

24 & 25 Vic., c. 104.

Powers of Trustees for Sale, etc., and Trustees of renewable Leaseholds.

2.[4] In all cases where, by any will, deed or other instrument of settlement, it is expressly declared that trustees or other persons therein named or indicated shall have a power of sale, either generally or in any particular event, over any immoveable property named or referred to in, or from time to time subject to, the uses or trusts of such will, deed or other instrument, it shall be lawful for such trustees or other persons, whether such property be vested in them or not, to exercise such power of sale by selling such property either together or in lots, and either by public auction or private contract, and either at one time or at several times. Trustees empowered to sell, may sell in lots, and either by public auction or private contract.

3.[5], [6] It shall be lawful for the persons making any such sale to insert any such special or other stipulations either as to title or evidence of title, or otherwise, in any conditions of sale, or contract for sale, as they shall think fit; and also to buy in the property or any part thereof at any sale by auction and to rescind or vary any contract for sale, and to re-sell the property which shall be so bought in, or as to which the contract shall be so rescinded, without being responsible for any loss which may be occasioned thereby; Sale may be made under special conditions, and trustees may buy in, etc.

[1] *See* the Indian High Courts Act, 1861 (24 & 25 Vict., c. 104), Coll. Stats., Ind., Vol. II.

[2] Words referring to the Straits Settlements, which were repealed by the Repealing Act, 1874 (16 of 1874), have been omitted.

[3] The words at the end of the definition of High Court were inserted by the Lower Burma Courts Act, 1900 (6 of 1900), Bur. Code.

[4] *Cf.* 23 & 24 Vict., c. 145, s. 1. S. 2 is repealed in places to which the Indian Trusts Act, 1882 (2 of 1882), extends or is extended. *See* s. 2 of that Act, Genl. Acts, Vol. III.

[5] *Cf.* 23 & 24 Vict., c. 145, s. 2.

[6] S. 3 is repealed in places to which the Indian Trusts Act, 1882 (2 of 1882), extends or is extended. *See* s. 2 of that Act, Genl. Acts, Vol. III.

and no purchaser under any such sale shall be bound to enquire whether the persons making the same may or may not have in contemplation any particular re-investment of the purchase-money in the purchase of any other property or otherwise.

Trustees exercising power of sale, etc., empowered to convey.

4.[1], [2] For the purpose of completing any such sale as aforesaid, the persons empowered to sell as aforesaid shall have full power to convey or otherwise dispose of the property in question, in such manner as may be necessary.

Money arising from sales to be laid out in manner indicated in will, etc.

5.[1], [3] The money so received upon any such sale as aforesaid shall be laid out in the manner indicated in that behalf in the will, deed or instrument containing the power of sale;

Until so laid out, money to be invested in Government securities.

and until the money to be received upon any sale as aforesaid shall be so disposed of, the same shall be invested at interest in Government securities for the benefit of such persons as would be entitled to the benefit of the money, and the interest and profits thereof, in case such money were then actually laid out as aforesaid:

Provided that if the will, deed or instrument shall contain no such indication, the persons empowered to sell as aforesaid shall invest the money so received upon any such sale in their names upon Government securities in India, and the interest of such securities shall be paid and applied to such person or persons for such purposes and in such manner as the rents and profits of the property sold as aforesaid would have been payable or applicable in case such sale had not been made.

Powers of Mortgagees.[4]

Powers incident to mortgages.

6.[5] Where any principal-money is secured or charged by deed on any immoveable property, or on any interest therein, the person to whom such money shall for the time being be payable, his executors, administrators and assigns, shall, at any time after the expiration of one year from the time when such principal-money shall have become payable, according to the terms of the deed, or after any interest on such principal-money shall have been in arrear for six months, or after any omission to pay any premium on any insurance which by the terms of the

[1] Ss. 4 and 5 are repealed in places to which the Indian Trusts Act, 1882 (2 of 1882), extends or is extended. *See* s. 2 of that Act, Genl. Acts, Vol. III.

[2] *Cf.* the Trustee Act, 1860 (23 & 24 Vict., c. 145), s. 3. This Act is now repealed by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), and the Settled Land Act, 1882 (45 & 46 Vict., c. 38).

[3] *Cf.* the Trustee Act, 1860 (23 & 24 Vict., c. 145), s. 4.

[4] As to the application of ss. 6 to 19 to certain English mortgages, *see* the Transfer of Property Act, 1882 (4 of 1882), s. 69, as amended by Act III of 1885, s. 5, Genl. Acts, Vol. III.

[5] *Cf.* the Trustee Act, 1860 (23 & 24 Vict., c. 145), s. 11.

deed ought to be paid by the person entitled to the property subject to the charge, have the following powers to the same extent (but no more) as if they had been in terms conferred by the person creating the charge, namely:—

1st, a power to sell or concur with any other person in selling the whole or any part of the property by public auction or private contract, subject to any reasonable conditions he may think fit to make, and to rescind or vary contracts for sale, or buy in and re-sell the property, from time to time, in like manner:

2nd, a power to appoint or obtain the appointment of a receiver of the rents and profits of the whole or any part of the property in manner hereinafter mentioned.

Receipts for purchase-money sufficient discharges.

7.[1] Receipts for purchase-money given by the person or persons exercising the power of sale hereby conferred shall be sufficient discharges to the purchasers, who shall not be bound to see to the application of such purchase-money.

Notice to be given before sale;

8.[2] No such sale as last aforesaid shall be made until after six months' notice in writing given to the person or one of the persons entitled to the property subject to the charge, or affixed on some conspicuous part of such property;

but purchaser relieved from inquiry as to circumstances of sale.

but when a sale has been effected in professed exercise of the powers hereby conferred, the title of the purchaser shall not be liable to be impeached on the ground that no case had arisen to authorize the exercise of such power, or that no such notice as aforesaid had been given; but any person damnified by any such unauthorized exercise of such power shall have his remedy in damages against the person or persons selling.

Application of purchase-money.

9.[3] The money arising by any sale effected as aforesaid shall be applied by the person receiving the same as follows:—

first, in payment of all the expenses incident to the sale or incurred in any attempted sale;

secondly, in discharge of all interest and costs then due in respect of the charge in consequence whereof the sale was made: and

thirdly, in discharge of all the principal moneys then due in respect of such charge;

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[1] *Cf.* the Trustee Act, 1860 (23 & 24 Vict., c. 145), s. 12. This Act is now repealed by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), and the Settled Land Act, 1882 (45 & 46 Vict., c. 38).

[2] *Cf. ibid*, s. 13.

[3] *Cf. ibid*, s. 14.

and the residue of such money shall be paid to the person entitled to the property subject to the charge, his executors, administrators or assigns, as the case may be.

Conveyance to purchaser.

10.[1] The person exercising the power of sale hereby conferred shall have power by deed to convey or assign to and vest in the purchaser the property sold for all the estate and interest therein which the person who created the charge had power to dispose of:

Provided that nothing herein contained shall be construed to authorize the mortgagee of a term of years to sell and convey the fee-simple of the property comprised therein in cases where the mortgagor could have disposed of such fee-simple at the date of the mortgage.

Owner of charge may call for title-deeds and conveyance of legal estate.

11.[2] At any time after the power of sale hereby conferred shall have become exerciseable, the person entitled to exercise the same shall be entitled to demand and recover from the person entitled to the property subject to the charge all the deeds and documents in his possession or power relating to the same property, or to the title thereto, which he would have been entitled to demand and recover if the same property had been conveyed, appointed or surrendered to and were then vested in him for all the estate and interest which the person creating the charge had power to dispose of;

and, where the legal estate shall be outstanding in a trustee, the person entitled to a charge created by a person equitably entitled, or any purchaser from such person, shall be entitled to call for a conveyance of the legal estate to the same extent as the person creating the charge could have called for such a conveyance if the charge had not been made.

Appointment of receiver.

12.[3] Any person entitled to appoint or obtain the appointment of a receiver as aforesaid may, from time to time, if any person or persons has or have been named in the deed of charge for that purpose, appoint such person or any one of such persons to be receiver, or if no person be so named, then may, by writing delivered to the person or any one of the persons entitled to the property subject to the charge, or affixed on some conspicuous part of the property, require such last-mentioned person or persons to appoint a fit and proper person as receiver, and if no such appointment be made within ten days after such requisition, then may in writing appoint any person he may think fit.

No person shall be ineligible for the office of receiver merely, because he is an officer of the High Court.

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[1] *Cf.* the Trustee Act, 1860 (23 & 24 Vict., c. 145), s. 15. This Act is now repealed by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), and the Settled Land Act, 1882 (45 & 46 Vict., c. 38).

[2] *Cf. ibid*, s. 16.

[3] *Cf. ibid*, s. 17.

Receiver deemed to be the agent of the mortgagor.

13.[1] Every receiver appointed as aforesaid shall be deemed to be the agent of the person entitled to the property subject to the charge, who shall be solely responsible for his acts or defaults, unless otherwise provided for in the charge.

Powers of receiver.

14.[2] Every receiver appointed as aforesaid shall have power to demand and recover and give effectual receipts for all the rents, issues and profits of the property of which he is appointed receiver, by suit, distress or otherwise in the name either of the person entitled to the property subject to the charge, or of the person entitled to the money secured by the charge, to the full extent of the estate or interest which the person who created the charge had power to dispose of.

Receiver may be removed, and new receivers appointed.

15.[3] Every receiver appointed as aforesaid may be removed by the like authority, or on the like requisition as before provided with respect to the original appointment of a receiver, and new receivers may be appointed from time to time.

Receiver to receive commission not exceeding five per cent.

16.[4] Every receiver appointed as aforesaid shall be entitled to retain out of any money received by him, in lieu of all costs, charges and expenses whatsoever, such a commission, not exceeding five per centum on the gross amount of all money received, as shall be specified in his appointment, and if no amount shall be so specified, then five per centum on such gross amount.

Receiver to insure if required.

17.[5] Every receiver appointed as aforesaid shall, if so directed in writing by the person entitled to the money secured by the charge, insure and keep insured from loss or damage by fire, out of the money received by him, the whole or any part of the property included in the charge which is in its nature insurable.

Application of moneys received by

18.[6] Every receiver appointed as aforesaid shall pay and apply all the money received by him in the first place in discharge of Government revenue and of all taxes, rates and assessments whatsoever, and in payment of his commission as aforesaid, and of the premiums on the insurances, if any; and in the next place in payment of all interest accruing due in respect of any principal-money then charged on the property over which he is receiver, or on any part thereof; and, subject as aforesaid, shall pay all the residue of such money to the person for the time being entitled to the property subject to the charge, his executors, administrators or assigns.

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[1] *Cf.* the Trustee Act, 1860 (23 & 24 Vict., c. 145), s. 18. This Act is now repealed by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), and the Settled Land Act, 1882 (45 & 46 Vict., c. 38).

[2] *Cf. ibid,* s. 19.

[3] *Cf. ibid,* s. 20.

[4] *Cf. ibid,* s. 21.

[5] *Cf. ibid,* s. 22.

[6] *Cf. ibid,* s. 23.

This part to relate to charges by way of mortgage only.

19.[1] The powers and provisions contained in sections 6 to 18 of this Act, both inclusive, relate only to mortgages or charges made to secure money advanced or to be advanced by way of loan, or to secure an existing or future debt.

Leases.

Restriction on effect of license to alien.

20.[2] Where any license to do any act which without such license would create a forfeiture, or give a right to re-enter, under a condition or power reserved in any lease heretofore granted, or to be hereafter granted, shall at any time after this Act comes into operation be given to any lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant made or to be made, or to the actual assignment, under-lease or other matter thereby specifically authorized to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such license);

and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease or other matter not specifically authorized or made dispunishable by such license, in the same manner as if no such license had been given; and the condition or right of re-entry shall be and remain in all respects as if such license had not been given, except in respect of the particular matter authorized to be done.

Restricted operation of partial licenses.

21.[3] Where in any lease heretofore granted, or to be hereafter granted there is or shall be a power or condition of re-entry on assigning or underletting, or doing any other specified act without license, and a license at any time after the passing of this Act shall be given to one of several lessees or co-owners to assign or under-let his share or interest, or to do any other act prohibited to be done without license, or shall be given to any lessee or owner, or any one of several lessees or owners, to assign or under-let part only of the property, or to do any other such act as aforesaid in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees, or owner or owners of the other shares or interests in the property, or by the lessee or owner of the rest of the property (as the case may be) over or in respect of such shares or interests or remaining property,

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[1] *Cf.* the Trustee Act, 1860 (23 & 24 Vict., c. 145), s. 24. This Act is now repealed by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), and the Settled Land Act, 1882 (45 & 46 Vict., c. 38).

[2] *Cf.* the Law of Property Amendment Act, 1859 (22 & 23 Vict., c. 35), s. 1.

[3] *Cf.* the Trustee Act, 1860 (23 & 24 Vict., c. 145), s. 2.

but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license.

Apportionment of conditions of re-entry in certain cases.

22.[1] Where the reversion upon a lease is severed, and the rent or other reservation is legally apportioned, the assignee of each part of the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, have and be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation, in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.

Rent-charges.

Release of part of land charged, not to be an extinguishment.

23.[2] The release from a rent-charge of part of the immoveable property charged therewith shall not extinguish the whole rent-charge, but shall operate only to bar the right to recover any part of the rent-charge out of the property released, without prejudice nevertheless to the rights of all persons interested in the property remaining unreleased, and not concurring in or confirming the release.

Powers.

Mode of execution of powers.

24.[3] A deed hereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing not testamentary, notwithstanding it shall have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution or attestation or solemnity:

Provided always that this provision shall not operate to defeat any direction in the instrument creating the power, that the consent of any particular person shall be necessary to a valid execution, or that any act shall be performed in order to give validity to any appointment, having no relation to the mode of executing and attesting the instrument:

and nothing herein contained shall prevent the donee of a power from executing it conformably to the power by writing or otherwise than by an instrument executed and attested as an ordinary deed, and to any such execution of a power this provision shall not extend.

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[1] *Cf.* the Law of Property Amendment Act, 1859 (22 & 23 Vict., c. 35), s. 3.
[2] *Cf. ibid,* s. 10.
[3] *Cf. ibid,* s. 12.

Legatee in trust may raise money by sale, notwithstanding want of express power in will.

25.[1] Where, by any will which shall come into operation after the passing of this Act, the testator shall have charged his immoveable property or any specific portion thereof with the payment of his debts, or with the payment of any legacy or other specific sum of money, and shall have bequeathed the property so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy or sum of money out of such property, it shall be lawful for the said legatee or legatees in trust, notwithstanding any trusts actually declared by the testator, to raise such debts, legacy or money as aforesaid by sale and absolute disposition by public auction or private contract, of the said property or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other;

and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper.

Powers given by last section extended to survivors, legatees, etc.

26.[2] The powers conferred by the last preceding section shall extend to all and every person or persons in whom the property bequeathed in trust shall for the time being be vested by survivorship, or under the laws relating to intestate or testamentary succession, or to any person or persons who may be appointed under any power in the will, or by the High Court, to succeed to the trusteeship vested in such legatee or legatees in trust as aforesaid.

Executors to have power of raising money, etc., where there is no sufficient bequest.

27.[3] If any testator who shall have created such a charge as is described in section 25 of this Act shall not have bequeathed the property charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors (if any) for the time being named in such will shall have the same or the like power of raising the said moneys as is hereinbefore vested in the legatee or legatees in trust of the said property, and such power shall from time to time devolve on and become vested in the person or persons (if any) in whom the executorship shall for the time being be vested.

Purchasers, etc., not bound to enquire as to powers.

28.[4] Purchasers or mortgagees shall not be bound to enquire whether the powers conferred by sections 25, 26 and 27 of this Act, or any of them shall have been duly and correctly exercised by the person or persons acting in virtue thereof.

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[1] *Cf.* the Law of Property Amendment Act, 1859 (22 & 23 Vict., c. 35), s. 14.
[2] *Cf. ibid*, s. 15.
[3] *Cf. ibid*, s. 16.
[4] *Cf. ibid*, s. 17.

(Inheritance. Assignment of Moveables and Terms for Years. Purchasers. Investment of Trust-funds.)

Inheritance.

Descent how traced.

29.[1] In cases of intestacies occurring before the first day of January, 1866, where there shall be a total failure of heirs of the purchaser, or where any immoveable property shall be descendible as if an ancestor had been the purchaser thereof, and there shall be a total failure of the heirs of such ancestor, then and in every such case the property shall descend, and the descent shall thenceforth be traced, from the person last entitled to the property as if he had been the purchaser thereof.

[2] This section shall be read as part of [3] Act No. XXX of 1839 *(for the amendment of the Law of Inheritance)*.

Assignment of Moveables and Terms for Years.

Assignment to self and others.

30.[4] Any person shall have power to assign moveable property now by law assignable, terms for years of immoveable property, and estates by *elegit* directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another.

Purchasers.

Not bound to see to application of purchase-money, etc.

31.[5] The *bonâ fide* payment to and the receipt of any person to whom any purchase or mortgage-money shall be payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the application, or being answerable for the misapplication thereof.

Investment of Trust-funds.

On what securities trust-funds may be invested.

32.[6] Trustees having trust-money in their hands which it is their duty to invest at interest shall be at liberty, at their discretion, to invest the same in any Government securities, and such trustees shall also be at liberty, at their discretion, to call in any trust-funds invested in any other securities than as aforesaid, and to invest the same on any such securities as aforesaid, and also from time to time, at their discretion, to vary any such investments as aforesaid for others of the same nature:

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[1] *Cf.* the Law of Property Amendment Act, 1859 (22 & 23 Vict., c. 35), s. 19.

[2] *Cf. ibid*, s. 20.

[3] The Inheritance Act, 1839 (30 of 1839), *supra*. It is repealed, except as to descents before 1866, by the Repealing Act, 1868 (8 of 1868).

[4] *Cf.* the Law of Property Amendment Act, 1859 (22 & 23 Vict., c. 35), s. 21.

[5] *Cf. ibid*, s. 23. (The limiting clause "unless the contrary shall be expressly declared by the instrument creating the trust or security" has not been reproduced.)

[6] *Cf.* the Trustee Act, 1860 (23 & 24 Vict., c. 145), s. 25. This Act is now repealed by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), and the Settled Land Act, 1882 (45 & 46 Vict., c. 38), s. 32 is repealed in places to which the Indian Trusts Act, 1882 (2 of 1882) extends or is extended, *see* s. 2 of that Act, Genl. Acts, Vol. III.

Provided always that no such original investment as aforesaid, and no such change of investment as aforesaid, shall be made where there is a person under no disability entitled in possession to receive the income of the trust-fund for his life, or for a term of years determinable with his life, or for any greater estate, without the consent in writing of such person.

Trustees and Executors.

Trustees may apply income of property of minors, etc., for their maintenance.

33.[1], [2] In all cases where any property is held by trustees in trust for a minor, either absolutely or contingently on his attaining majority, or on the occurrence of any event previously to his attaining majority, it shall be lawful for such trustees, at their sole discretion, to pay to the guardians (if any) of such minor, or otherwise to apply for or towards the maintenance or education of such minor, the whole or any part of the income to which such minor may be entitled in respect of such property, whether there be any other fund applicable to the same purpose, or any other person bound by law to provide for such maintenance or education, or not;

and such trustees shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in proper securities, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations shall have arisen:

Provided always, that it shall be lawful for such trustees at any time, if it shall appear to them expedient, to apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

Provisions for appointment of new trustees on death, etc.

34.[1], [2] Whenever any trustee, either original or substituted, and whether appointed by any High Court or otherwise, shall die, or be six months absent from British India, or desire to be discharged from, or refuse, or become unfit or incapable, to act in the trusts or powers in him reposed, before the same shall have been fully discharged and performed, it shall be lawful for the person or persons nominated for that purpose by the deed, will or other instrument creating the trust (if any), or if there be no such person, or no such person able and willing to act, then for the surviving or continuing trustees or trustee for the time being, or the acting executors or executor or administrators or administrator,

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[1] *Cf.* the Trustee Act, 1860 (23 & 24 Vict., c. 145), ss. 26 and 27. This Act is now repealed by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), and the Settled Land Act, 1882 (45 & 46 Vict., c. 38).

[2] Ss. 33 and 34 are repealed in places to which the Indian Trusts Act, 1882 (2 of 1882), extends or is extended. *See* s. 2 of that Act, Genl. Acts, Vol. III.

of the last surviving and continuing trustee, or for the retiring trustees, if they shall all retire simultaneously, or for the last retiring trustee, or where there are two or more classes of trustees of the instrument creating the trust, then for the surviving or continuing trustees or trustee of the class in which any such vacancy or disqualification shall occur (and for this purpose any refusing or retiring trustee shall, if willing to act in the execution of the power, be considered a continuing trustee), by writing to appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying, or being absent from British India, or desiring to be discharged, or refusing or becoming unfit or incapable to act as aforesaid.

Transfer of trust-property to new trustees.

So often as any new trustee or trustees shall be so appointed as aforesaid, all the trust-property (if any) which for the time being shall be vested in the surviving or continuing trustees or trustee, or in the heirs, executors or administrators of any trustee, shall with all convenient speed be conveyed and transferred so that the same may be legally and effectually vested in such new trustee or trustees, either solely or jointly with the surviving or continuing trustees or trustee, as the case may require.

Powers, etc., of new trustees.

Every new trustee to be appointed as aforesaid, as well before as after such conveyance or transfer as aforesaid, and also every trustee appointed by any High Court, either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall in all respects act as if he had been originally nominated a trustee by the deed, will or other instrument (if any) creating the trust.

Appointment of Official Trustee to be a trustee.

The Official Trustee may with his consent, and by the order of the High Court, be appointed under this section in any case in which only one trustee is to be appointed and such trustee is to be the sole trustee.

Appointment in place of trustee predeceasing testator.

35.[1], [2] The power of appointing new trustees hereinbefore contained may be exercised in cases where a trustee nominated in a will has died in the lifetime of the testator.

Trustees' receipts to be discharges.

36.[1], [2] The receipts in writing of any trustees or trustee for any money payable to them or him by reason, or in the exercise, of any trusts or powers reposed or vested in them or him, shall be sufficient discharges for the money therein expressed to be received, and shall effectually exonerate the persons paying such money from seeing to the application thereof, or from being answerable for any loss or misapplication thereof.

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[1] *Cf.* the Trustee Act, 1869 (23 & 24 Vict., c. 145), ss. 28 and 29. This Act is now repealed by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), and the Settled Land Act, 1882 (45 & 46 Vict., c. 38).

[2] Ss. 35 and 36 are repealed in places to which the Indian Trusts Act, 1882 (2 of 1882), extends or is extended, *see* s. 2 of that Act, Genl. Acts, Vol. III.

Every trust-instrument deemed to contain clauses for indemnity and re-imbursement of trustees.

37.[1], [2] Every deed, will or other instrument creating a trust, either expressly or by implication, shall, without prejudice to the clauses actually contained therein, be deemed to contain a clause in the words or to the effect following, that is to say,—

"that the trustees or trustee for the time being of the said deed, will or other instrument shall be respectively chargeable only for such moneys, stocks, funds and securities as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects or defaults, and not for those of each other, nor for any banker, broker or other person with whom any trust-moneys or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds or securities, nor for any other loss, unless the same shall happen through their own wilful default respectively; " and also that it shall be lawful for the trustees or trustee for the time being of the said deed, will or other instrument, to re-imburse themselves or himself, or pay or discharge out of the trust-premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will or other instrument."

Executors may compound, etc.

38.[2] It shall be lawful for any executors to pay any debts or claims upon any evidence that they may think sufficient, and to accept any composition, or any security for any debts due to the deceased, and to allow any time for payment of any such debts as they shall think fit, and also to compromise, compound or submit to arbitration all debts, accounts, claims and things whatsoever relating to the estate of the deceased, and for any of the purposes aforesaid to enter into, give and execute such agreements, instruments of composition, releases and other things as they shall think expedient, without being responsible for any loss to be occasioned thereby.

39. [*Trustee, etc., making payment under power-of-attorney, not liable by reason of death of party giving power.*] *Rep. by the Powers-of-attorney Act, 1882 (VII of 1882), s. 6.*

As to liability of executor or administrator in respect of rents, covenants or agreements.

40.[3] Where an executor or administrator liable as such to the rents, covenants or agreements contained in any lease or agreement for a lease granted or assigned, whether before or after the passing of this Act, to the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said lease, or agreement for a lease,

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[1] S. 37 is repealed in places to which the Indian Trusts Act, 1882 (2 of 1882), extends or is extended, *see* s. 2 of that Act, Genl. Acts, Vol. III.

[2] *Cf.* the Trustee Act, 1860 (23 & 24 Vict., c. 145), ss. 30 and 31. This Act is now repealed by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), and the Settled Land Act, 1882 (45 & 46 Vict., c. 38).

[3] *Cf.* the Law of Property Act, 1859 (22 & 23 Vict., c. 35), s. 27.

as may have accrued due and been claimed up to the time of the assignment hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised, although the period for laying out the same may not have arrived, and shall have assigned the lease or agreement for a lease to a purchaser thereof, he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto, respectively, without appropriating any part, or any further part (as the case may be), of the estate of the deceased to meet any future liability under the said lease or agreement for a lease.

The executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said lease or agreement for a lease.

Nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the persons or persons to or amongst whom the said assets may have been distributed.

As to liability of executor, etc., in respect of rents, etc., in conveyance on rent-charge.

41.[1] In like manner, where an executor or administrator liable as such to the rent, covenants or agreements contained in any conveyance on chief rent or rent-charge (whether any such rent be by limitation of use, grant or reservation), or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said conveyance or agreement for a conveyance, as may have accrued due and been claimed up to the time of the conveyance hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and shall have conveyed such property, or assigned the said agreement for such conveyance as aforesaid, to a purchaser thereof, he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto, respectively, without appropriating any part or any further part (as the case may be) of such estate to meet any future liability under the said conveyance or agreement for a conveyance.

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[1] *Cf.* the Law of Property Act, 1859 (22 & 23 Vict., c. 35), s. 28.

The executor or administrator so distributing the residuary estate shall not, after having made or executed such conveyance or assignment, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said conveyance or agreement for conveyance.

Nothing herein contained shall prejudice the right of the granton, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or among whom the said assets may have been distributed.

As to distribution of assets of testator or intestate after notice given by executor and administrator.

42.[1] Where an executor or administrator shall have given such or the like notices as in the opinion of the Court in which such executor or administrator is sought to be charged would have been given by the High Court in an administration-suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices, or the last of the said notices, for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets, or a part thereof, as the case may be.

Nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, into the hands of the person or persons who may have received the same respectively.

Trustee, executor, etc., may apply by petition to Judge of High Court for opinion, advice, etc., in management, etc., of trust-property.

43.[1] Any [2][trustee,] executor or administrator shall be at liberty, without the institution of a suit, to apply by petition to any Judge of the High Court for the opinion, advice or direction of such Judge on any question respecting the [2] [management or] administration of the [2][trust-property or] the assets of any testator or intestate.

Such application shall be served upon, or the hearing thereof shall be attended by, all persons interested in such application, or such of them as the said Judge shall think expedient.

The [2] [trustee,] executor or administrator acting upon the opinion, advice or direction given by the said Judge shall be deemer, so far as regards his own responsibility, to have discharged his duty as such [2] [trustee],

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[1] *Cf.* the Law of Property Act, 1859 (22 & 23 Vict., c. 35), ss. 29 and 30.

[2] These words are repealed in places to which the Indian Trusts Act, 1882 (2 of 1882), extends or is extended, *see* s. 2 of that Act, Genl. Acts, Vol. III.

executor or administrator in the subject-matter of the said application:

Provided nevertheless, that this Act shall not extend to indemnify any [1] [trustee], executor or administrator, in respect of any act done in accordance with such opinion, advice or direction as aforesaid, if such [1] [trustee,] executor or administrator shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction: and the costs of such application as aforesaid shall be in the discretion of the Judge to whom the said application shall be made.

General Provisions.

Tenants for life, etc., may execute powers, notwithstanding incumbrances.

44.[2] For the purposes of this Act a person shall be deemed to be entitled to the possession or to the receipt of the rents and income of immoveable or moveable property, although his estate may be charged or incumbered, either by himself or by any former owner, or otherwise howsoever to any extent: but the estates or interests of the parties to any such charge or incumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and income as aforesaid, unless they shall concur therein.

Operation of Act.

45.[3] The provisions contained in this Act shall, except as hereinbefore otherwise provided, extend only to persons entitled or acting under a deed, will, codicil or other instrument executed after this Act comes into operation or under a will or codicil confirmed or revived by a codicil executed after that date, and only to property in British India and to cases to which English law is applicable.

Short title.

46. This Act may be called the Trustees' and Mortgagees' Powers Act, 1866.

47. [*Application of Act to Straits Settlements.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

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[1] *See* second footnote on previous page.
[2] *Cf.* the Law of Property Act, 1859 (22 & 23 Vict., c. 35), s. 31.
[3] *Cf.* the Trustee Act, 1860 (23 & 24 Vict., c. 145), s. 34. This Act is now repealed by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), and the Settled Land Act, 1882 (45 & 46 Vict., c. 38).

ACT No. XVI OF 1867 [1].

[*1st March, 1867.*]

An Act to authorize the making of acting appointments to certain Judicial Offices.

Preamble.

WHEREAS the Governor General of India in Council or the Local Government, as the case may be, is empowered by divers enactments to appoint the Judges of certain Courts in British India: And whereas it has been doubted whether he or it is empowered to appoint persons to act temporarily as such Judges, and it is expedient to remove such doubts; It is hereby enacted as follows:—

Power to appoint acting Judges.

1. In every case in which the Governor General of India in Council, or the Local Government, as the case may be, has power under any Act or Regulation to appoint a Judge of any Court in British India, such power shall be taken to include the power to appoint any person capable of being appointed a permanent Judge of such Court, to act as Judge of the same Court for such time as the Governor General of India in Council or the Local Government, as the case may be, shall direct. Every person so appointed to act temporarily as a Judge of any such Court shall have the powers and perform the duties which he would have had and been liable to perform in case he had been duly appointed a permanent Judge of the same Court.

Certain enactments to be construed as if they contained a clause like section 1 of this Act.

2. Every such Act and Regulation shall be construed as if it contained a special clause to the purport or effect of the first section of this Act.

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[1] Short title, "The Acting Judges Act, 1867." *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

The Bill which was passed on the 1st March, 1867, and published as Act No. 16 of 1867, was introduced and passed at one sitting. *See* the Proceedings in Council published in Gazette of India, 1867, Supplement, p. 180.

This Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely :

The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum—*see* Gazette of India, 1881, Pt. I, p. 504.

ACT No. XXII OF 1867 [1].

[*15th March, 1867.*]

An Act for the regulation of public Saráís and Puraos.

WHEREAS it is expedient to provide for the regulation of public Saráís and Puraos: It is hereby enacted as follows:— Preamble.

1. [*Repeal of Bengal Regulation XIV of 1807, section 11, clause 5.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

2. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause.

"saráí" means any building used for the shelter and accommodation of travellers, and includes, in any case in which only part of a building is used as a saráí, the part so used of such building. It also includes a purao so far as the provisions of this Act are applicable thereto: "Saráí."

"keeper of a saráí" includes the owner and any person having or acting in the care or management thereof: "Keeper of a saráí."

[2] "Magistrate of the District" means the chief officer charged with the executive administration of a district in criminal matters whatever may be his designation: "Magistrate of the District."

Words in the singular include the plural, and *vice versâ* and, in any place in which this Act shall operate, "Local Government" shall mean the person administering executive government in such place, and shall include a Chief Commissioner and the Commissioner in Sind. Number. "Local Government."

3. Within six months after this Act shall come into operation, the Magistrate of the District in which any saráí to which this Act shall apply may be situate shall, and from time to time thereafter such Magistrate may, give to the keeper of every such saráí notice in writing of this Act, by leaving such notice for the keeper at the saráí; and shall by such notice require the keeper to register the saráí as by this Act provided. Notice of this Act to be given to keepers of saráís.

Such notice may be in the form in the Schedule to this Act annexed or to the like effect.

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[1] For Statement of Objects and Reasons to the Bill which was passed into law as Act 22 of 1867, *see* Gazette of India, 1867, p. 194 and for proceedings in Council relating to the Bill, *see ibid*, Supplement, pp. 62, 72, 158, 225 and 232.

As to extent, *see* note to s. 17, *infra*.

The Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely :—

The Districts of Hazáribágh, Lohárdaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44), and Mánbhum, and Pargana Dhalbhum and the Kolhán in the District of Singbhum. *See* Gazette of India, 1881, Pt. I, p. 504.

The Tarái of the Province of Agra. *See* Gazette of India, 1876, Pt. I, p. 505.

[2] This reference should now be read as "District Magistrate", *see* para. 2 of s. 3 of the Code of Criminal Procedure, 1898 (Act V of 1898), Genl. Acts. Vol. V.

Registers of saráis to be kept.

4. The Magistrate of the District shall keep a register in which shall be entered by such Magistrate or such other person as he shall appoint in this behalf, the names and residences of the keepers of all saráís within his jurisdiction, and the situation of every such sarái.

No charge shall be made for making any such entry.

Lodgers, etc., not to be received in saráís until registered.

5. After one month after the giving of such notice to register as by this Act provided, the keeper of any sarái or any other person shall not receive any lodger or allow any person, cattle, sheep, elephant, camel or other animal, or any vehicle, to halt or be placed in such sarái until the same and the name and residence of the keeper thereof shall have been registered as by this Act provided.

Magistrate may refuse to register keeper not producing certificate of character.

6. The Magistrate of the District may, if he shall think fit, refuse to register as the keeper of a sarái a person who does not produce a certificate of character in such form and signed by such person as the Local Government shall from time to time direct.

Duties of keepers of saráis.

7. The keeper of a sarái shall be bound—

(1) When any person in such sarái is ill of any infectious or contagious disease, or dies of such disease, to give immediate notice thereof to the nearest police-station:

(2) at all times when required by any Magistrate or any other person duly authorized by the Magistrate of the District in this behalf, to give him free access to the sarái and allow him to inspect the same or any part thereof:

(3) to thoroughly cleanse the rooms and verandahs, and drains of the sarái, and the wells, tanks, or other sources from which water is obtained for the persons or animals using it, to the satisfaction of, and so often as shall be required by, the Magistrate of the District, or such person as he shall appoint in this behalf:

(4) to remove all noxious vegetation on or near the sarái, and all trees and branches of trees capable of affording to thieves means of entering or leaving the sarái:

(5) to keep the gates, walls, fences, roofs and drains of the sarái in repair:

(6) to provide such number of watchmen as may, in the opinion of the Magistrate of the District, subject to such rules as the Local Government may prescribe in this behalf, be necessary for the safety and protection of persons and animals or vehicles lodging in, halting at or placed in the sarái; and

(7) to exhibit a list of charges for the use of the sarái at such place and in such form and languages as the Magistrate of the District shall from time to time direct.

Power to order reports from keepers of saráís.

8. The keeper of a saráí shall from time to time, if required so to do by an order of the Magistrate of the District served upon him, report, either orally or in writing as may be directed by the Magistrate to such Magistrate or to such person as the Magistrate shall appoint, every person who resorted to such saráí during the preceding day or night.

If written reports are required for any space of time exceeding a single day or night, schedules shall be furnished by the Magistrate of the District to the keeper.

The keeper shall from time to time fill up the said schedules with the information so required, and transmit them to the said Magistrate, in such manner and at such intervals as may from time to time be ordered by him.

Power to shut up, secure, clear and clean deserted saráís.

9. If any saráí by reason of abandonment or of disputed ownership shall remain untenanted, and thereby become a resort of idle and disorderly persons, or become in a filthy or unwholesome state, or be complained of by any two or more of the neighbours as a nuisance, the Magistrate of the District, after due enquiry, may cause notice in writing to be given to the owner or to the person claiming to be the owner, if he be known and resident within the district, and may also cause such notice to be put on some conspicuous part of the saráí, requiring the persons concerned therein, whoever they may be, to secure, enclose, clean or clear the same;

and if such requisition shall not be complied with within eight days, the Magistrate of the District may cause the necessary work to be executed, and all expenses thereby incurred shall be paid by the owner of the saráí, and shall be recoverable like penalties under this Act, or, in case of abandonment or disputed ownership of the saráí, by the sale of any material found therein.

Taking down or repairing ruinous saráís.

10. If a saráí or any part thereof be deemed by the Magistrate of the District to be in a ruinous state, or likely to fall, or in any way dangerous to the persons or animals lodging in or halting at the saráí, he shall give notice in writing to the keeper of the saráí requiring him forthwith to take down, repair or secure (as the case may be) the saráí or such part thereof as the case may require.

If the keeper do not begin to take down, repair or secure the saráí, or such part as aforesaid within three days after such notice, and complete such work with due diligence, the Magistrate shall cause all or so much of the saráí as he shall think necessary to be taken down, repaired or otherwise secured.

All the expenses so incurred by the Magistrate shall be paid by the keeper of the saráí, and shall be recoverable from him as hereinafter mentioned.

Sale of materials of ruinous saráis.

11. If any such saráí or any part thereof be taken down by virtue of the powers aforesaid, the Magistrate of the District may sell the materials thereof, or so much of the same as shall be taken down under the provisions of the last preceding section, and apply the proceeds of such sale in payment of the expenses incurred, and shall restore the over-plus (if any) arising from such sale to the owner of such saráí on demand, and may recover the deficiency (if any) as if the amount thereof were a penalty under this Act.

Penalty for permitting saráis to be filthy or overgrown.

12. Whoever, being the keeper of any saráí, suffers the same to be in a filthy and unwholesome state, or overgrown with vegetation, or after the expiration of two days from the time of his receiving notice in writing from the Magistrate of the District to cleanse or clear the same, or after he shall have been convicted of suffering the same to be in such a state or so overgrown as aforesaid, shall allow the same to continue in such state, or so overgrown, shall be liable to the penalties provided in section 14 of this Act:

Proviso.

Provided that the Magistrate of the District may, in lieu of enforcing such daily penalty, enter on and cleanse or clear the said saráí, and the expense incurred by the Magistrate in respect thereof shall be paid to him by the keeper, and shall be recoverable as by this Act provided in the case of penalties.

Power for Local Government to make regulations.

13. The Local Government may from time to time make regulations for the better attainment of the objects of this Act, provided that such rules be not inconsistent with this Act or with any other law for the time being in force, and may from time to time repeal, alter and add to the same.

All regulations made under this Act and all repeals thereof, and alterations and additions thereto, shall be published in the local official Gazette.

Penalty for infringing Act or regulations.

14. If the keeper of a saráí offend against any of the provisions of this Act or any of the regulations made in pursuance of this Act, he shall for every such offence be liable on conviction before any Magistrate to a penalty not exceeding twenty rupees, and to a further penalty not exceeding one rupee a day for every day during which the offence continues:

Provided always that this Act shall not exempt any person from any penalty or other liability to which he may be subject, irrespective of this Act.

All penalties imposed under this Act may be recovered in the same manner as fines may be recovered under [1] section 61 of the Code of Criminal Procedure. XXV of 1861.

[1] *See* now sections 386, 387 and 389 of the Code of Criminal Procedure, 1898 (Act 5 of 1898). Genl. Acts, Vol. V.

15. Where a keeper of a sarái is convicted of a third offence under this Act, he shall not afterwards act as keeper of a sarái without the license in writing of the Magistrate of the District, who may either withhold such license or grant the same on such terms and conditions as he may think fit. Conviction for third offence to disqualify persons from keeping saráis.

16. No part of this Act, except section 8, shall apply to any sarái which may be under the direct management of the Local Government or of any Municipal Committee. Nothing in Act to apply to certan saráis.

17. This Act shall in the first instance extend only to the [1] territories under the government of the Lieutenant-Governor of the North-Western Provinces of the Presidency of Fort William in Bengal. Extent of Act.

But it shall be lawful for the Local Government, by notification in the local Gazette, to [2] extend this Act, *mutatis mutandis*, to any other part of the territories which are or may be vested in Her Majesty or Her Successors by the [3] Statute 21 & 22 Vict., cap. 106 (*an Act for the better government of India*), except the towns of Calcutta, Madras and Bombay [4] * *. Power to Governor General in Council to extend this Act.

18. This Act may be called the Saráis Act, 1867. Short title.

SCHEDULE.

Form of Notice.

Take notice that on the day of 1867, an Act called the Saráis Act, 1867, was passed, and that, before the day of 18 , you, being keeper of a sarái [*or* purao] within [*here state the district over which the jurisdiction of the Magistrate giving the notice extends*], must have your sarái [*or* purao] registered, and that the registers to be kept at [*here state where the register is to be kept*] and that, if you do not have your sarái [*or* purao] so registered, you will be liable to a penalty not exceeding twenty rupees, and to a further penalty not exceeding one rupee a day for every day during which the offence continues, and that on your applying to [*here give the name and*

[1] Read now the Province of Agra. The Lieutenant-Governor of these territories is now Lieutenant-Governor of the United Provinces of Agra and Oudh, *see* Proclamation No. 996 P., dated the 22nd March, 1902, Gazette of India, 1902, Pt. I, p. 228, and the United Provinces (Designation) Act, 1902 (7 of 1902), Genl. Acts, Vol. V.

[2] It has been extended to Oudh. *See* Notification No. 591, dated 25th July, 1883, in North-West Provinces and Oudh Gazette, 1883, Pt. I, p. 433.

It has also been extended to the Punjab, *see* Notification No. 4499, dated 13th December 1879, in Punjab Government Gazette, 1879, Pt. I, p. 727, but its application to that part of the Hazara District, known as Upper Tanawal, which then formed part of the Punjab, is barred by the Hazara (Upper Tanawal) Regulation, 1900 (2 of 1900), Panj. & N. W. Code.

[3] Short title, "the Government of India Act, 1858," Coll. Stats., Ind., Vol. I.

[4] The words "and the Settlement of Prince of Wales' Island, Singapore and Malacca" were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

address of the person to keep the register] he will register your sarái [*or* purao] free of all charge to you.

Dated the *day of* *18*

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ACT No. XXV OF 1867.[1]

[*22nd March, 1867.*]

An Act for the regulation of Printing-presses and Newspapers, for the preservation of copies of books printed in British India, and for the registration of such books.

WHEREAS it is expedient to provide for the regulation of printing-presses and of periodicals containing news, for the preservation of Preamble.

[1] Short title, "The Press and Registration of Books Act, 1867," *See* the Indian Short Titles Act, 1897 (14 of 1897), Genl. Acts, Vol. IV.

For Statement of Objects and Reasons, *see* Gazette of India, 1867, p. 191; and for Proceedings in Council, *see ibid*, Supplement, pp. 72, 156 and 299.

This Act was declared, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, to be in force in the whole of British India, except as regards the Scheduled Districts.

It has been applied to the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regu-

[1] *copies of every book printed or lithographed in British India, and for the registration of such books; It is hereby enacted as follows: —

PART I.

PRELIMINARY.

Interpretation-clause.

1. In this Act, unless there shall be something repugnant in the subject or context,—

"Book."

"book" includes every volume, part or division of a volume, and

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lation, 1899 (3 of 1899), Ben. Code, Vol. I; and to Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 4 (*l*) and Sch. I, Bur. Code.

It has been applied, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), to the following Scheduled Districts, namely :—

the Province of Sindh, *see* Gazette of India, 1880, Pt. I, p. 672;

Aden, *see* Gazette of India, 1879, Pt. I, p. 434;

the Territory of Peint, *see* Gazette of India, 1887, Pt. I, p. 144; (Peint is now no longer a Scheduled District, and all the enactments in force in the Nasik District of the Bombay Presidency, among them Act 25 of 1867, are now in force in this territory, *see* the Peint Laws Act, 1894 (Bom. Act 2 of 1894), Bom. Code, Vol. III);

the Island of Perim, *see* Gazette of India, 1887, Pt. I, p. 5;

that portion of the Jalpaiguri District which was formerly the Jalpaiguri Subdivision and now forms the western portion of the District of Jalpaiguri and extends as far east as the Teesta River, the hills west of the Teesta River in the District of Darjiling, the Darjiling Tarai, the Damson Subdivision of the Darjiling District, the Districts of Hazaribagh, Lohardaga [now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44], and Manbhum, and Pargana Dhalbhum and the Kolhán in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, pp. 74 and 504;

the Districts of Kumáon and Garhwal, *see* Gazette of India, 1876, Pt. I, p. 605;

the scheduled portion of the Mirzapur District, *see* Gazette of India, 1879, Pt. I, p. 383;

Pargana Jaunsar Bawar in the Dehra Dun District, *see* Gazette of India, 1879, Pt. I, p. 382;

the Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan, *see* Gazette of India, 1886, Pt. I, p. 48 (portions of the districts of Hazara, Bannu, Dera Ismail Khan, and Dera Ghazi Khan and the Districts of Peshawar and Kohat, now form part of the North-West Frontier Province, *see* Gazette of India, 1901, Pt. I, p. 857, and *ibid*, 1902, Pt. I, p. 575, but its application to that part of the Hazara District known as Upper Tanawal is barred by the Hazara (Upper Tanawal) Regulation, 1900 (2 of 1900), Punj. and N.-W. Code);

the Districts of Kamrup, Nowgong, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Duars) and Cachar (excluding the North Cachar Hills), *see* Gazette of India, 1878, Pt. I, p. 533;

the Garo Hills, the Khasi and Jaintia Hills, the Naga Hills, the North Cachar Hills in the Cachar District, and the Eastern Duars in the Goalpara District, *see* Gazette of India, 1897, Pt. I, p. 299;

the District of Sylhet, *see* Gazette of India, 1879, Pt. I, p. 631.

It has been declared, by notification under s. 3 (*b*) of the same Act, 1874 (14 of 1874), not to be in force in the Scheduled District of Lahaul in the Punjab, *see* Gazette of India, 1886, Pt. I, p. 301.

It has been extended, by notification under s. 5 of the same Act, to the Tarai District of the Province of Agra, *see* Gazette of India, 1876, Pt. I, p. 506.

[1] The word "three" in the preamble was repealed by the Press and Registration of Books Act Amendment Act, 1890 (10 of 1890), s. 1, Genl. Acts, Vol. IV.

pamphlet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed:

"British India" means the territories which are or shall be vested in Her Majesty or Her Successors by the [1] Statute 21 & 22 Vict., cap. 106 (*An Act for the better government of India*) [2] * * * * *: "British India."

"Magistrate" means any person exercising the full powers of a Magistrate [3], and includes a [4] Magistrate of Police [5] * * * *: "Magistrate."

words in the singular include the plural, and *vice versâ*: Number.

words denoting the masculine gender include females: Gender.

And in every part of British India to which this Act shall [6] extend, "Local Government" shall mean the person authorized by law to administer executive government in such part, and includes a Chief Commissioner. "Local Government."

2. [*Repeal of Act XI of 1835.*] *Rep. by Act XIV of 1870.*

PART II.

Of Printing-presses and Newspapers.

3. Every book or paper printed within British India shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper be published) [7] [the name] of the publisher and the place of publication. Particulars to be printed on books and papers.

4. No person shall, within British India, keep in his possession any press for the printing of books or papers, who shall not have made and subscribed the following declaration before the Magistrate within whose local jurisdiction such press may be: Keeper of printing-press to make declaration.

"I, *A. B.*, declare that I have a press for printing at——."

And this last blank shall be filled up with a true and precise description of the place where such press may be situate.

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[1] Short title, "The Government of India Act, 1858," *see* Coll. Stats., Ind., Vol. I. *Cf.* definition in s. 3 (24) of the General Clauses Act, 1897 (10 of 1897), Genl. Acts, Vol. IV.

[2] The words "other than the Settlement of Prince of Wales' Island, Singapore and Malacca" were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[3] Now Magistrate of the first class, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 3, Genl. Acts, Vol. V.

[4] Now Presidency Magistrate, *see* the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890), s. 3, and the Code of Criminal Procedure, 1898 (Act 5 of 1898).

[5] The words "and a Justice of the Peace" were repealed by the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890), s. 2.

[6] As to the places in British India in which the Act is in force, *see* the foot-note on pp. 632 and 633.

[7] The words "the name" were inserted by the Amending Act, 1891 (12 of 1891), Genl. Acts, Vol. IV.

(Part II.—Of Printing-presses and Newspapers.)

Rules as to publication of printed periodicals containing public news.

5. No printed periodical work, containing public news or comments on public news, shall be published in British India, except in conformity with the rules hereinafter laid down:

(1) The printer and the publisher of every such periodical work shall appear before the Magistrate within whose local jurisdiction such work shall be published, and shall make and subscribe, in duplicate, the following declaration:

"I, *A. B.*, declare that I am the printer [*or* publisher, *or* printer and publisher] of the periodical work entitled——and printed [*or* published, *or* printed and published, *as the case may be*] at——."

And the last blank in this form of declaration shall be filled up with a true and precise account of the premises where the printing or publication is conducted.

(2) As often as the place of printing or publication is changed, a new declaration shall be necessary:

(3) As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave British India, a new declaration from a printer or publisher resident within the said territories shall be necessary.

Authentication of declaration.

6. Each of the two originals of every declaration so made and subscribed as is aforesaid, shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made.

Deposit.

One of the said originals shall be deposited among the records of the office of the Magistrate, and the other shall be deposited among the records of the High Court of Judicature, or [1] [other principal Civil Court of original jurisdiction for the place where] the said declaration shall have been made.

Inspection and supply of copies.

The officer in charge of each original shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said declaration, attested by the seal of the Court which has the custody of the original, on payment of a fee of two rupees.

Office copy of declaration to be *prima facie* evidence.

7. In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, that the said person was printer or publisher, or

[1] These words in s. 6 were substituted for the words "other Court within the local limits of whose ordinary original civil jurisdiction" by the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890), s. 3, Genl. Acts, Vol. IV.

printer and publisher (according as the words of the said declaration may be) of every portion of every periodical work whereof the title shall correspond with the title of the periodical work mentioned in the declaration.

New declaration by persons who have signed declaration and subsequently ceased to be printers or publishers.

8. Provided always that any person who may have subscribed any such declaration as is aforesaid, and who may subsequently cease to be the printer or publisher of the periodical work mentioned in such declaration, may appear before any Magistrate, and make and subscribe in duplicate the following declaration:—

"I, *A.B.*, declare that I have ceased to be the printer [*or* publisher, *or* printer and publisher] of the periodical work entitled——."

Authentication and filing.

Each original of the latter declaration shall be authenticated by the signature and seal of the Magistrate before whom the said latter declaration shall have been made, and one original of the said latter declaration shall be filed along with each original of the former declaration.

Inspection and supply of copies.

The officer in charge of each original of the latter declaration shall allow any person applying to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said latter declaration, attested by the seal of the Court having custody of the original, on payment of a fee of two rupees.

Putting copy in evidence.

In all trials in which a copy, attested as is aforesaid, of the former declaration shall have been put in evidence, it shall be lawful to put in evidence a copy, attested as is aforesaid, of the latter declaration, and the former declaration shall not be taken to be evidence that the declarant was, at any period subsequent to the date of the latter declaration, printer or publisher of the periodical work therein mentioned.

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[1] PART III.

Delivery of Books.

Copies of books printed after commencement of Act to be delivered gratis to Government.

9. Printed or lithographed copies of the whole of every book which shall be printed or lithographed in British India after this Act shall come into force, together with all maps, prints or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same, shall, notwithstanding any agreement (if the book be published) between the printer and publisher thereof, be delivered by the printer at such place and to such officer as the Local Government

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[1] This Part was substituted for the original Part III (relating to the delivery to the Local Government of all published books, etc., and to the payment therefor and disposal of the copies) by the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890), s. 4. Genl. Acts, Vol. IV.

shall, by notification in the official Gazette, from time to time direct, and free of expense to the Government, as follows, that is to say[1] :—

(*a*) in any case, within one calendar month after the day on which any such book shall first be delivered out of the press, one such copy, and,

(*b*) if within one calendar year from such day the Local Government shall require the printer to deliver other such copies not exceeding two in number, then within one calendar month after the day on which any such requisition shall be made by the Local Government on the printer, another such copy, or two other such copies, as the Local Government may direct,

the copies so delivered being bound, sewed or stitched together and upon the best paper on which any copies of the book shall be printed or lithographed.

The publisher or other person employing the printer shall, at a reasonable time before the expiration of the said month, supply him with all maps, prints and engravings finished and coloured as aforesaid, which may be necessary to enable him to comply with the requirements aforesaid.

Nothing in the former part of this section shall apply to—

(*i*) any second or subsequent edition of a book in which edition no additions or alterations either in the letter-press or in the maps, book prints or other engravings belonging to the book have been made, and a copy of the first or some preceding edition of which book has been delivered under this Act, or

(*ii*) any periodical work published in conformity with the rules laid down in section 5 of this Act.

Receipt for copies delivered under section 9.

10. The officer to whom a copy of a book is delivered under the last foregoing section shall give to the printer a receipt in writing therefor.

Disposal of copies delivered under section 9.

11. The copy delivered pursuant to clause (*a*) of the first paragraph of section 9 of this Act shall be disposed of as the Local Government

[1] For officers to whom books are to be delivered under this section in :—

(1) Ajmer, *see* Aj. R. and O., Vol. I.
(2) Assam, *see* Assam R. and O., p. 10 (rule 1).
(3) Bengal, including Eastern Bengal, *see* Ben. Stat. R. and O., Vol. II, p. 16 (rule 1).
(4) Bombay, *see* Bom. R. and O., Vol. I, p. 31.
(5) Burma, *see* Bur. R. M., Vol. I.
(6) Central Provinces, *see* Cent. Provs. R. and O., p. 22 (rule 1).
(7) Madras, *see* Mad. R. and O., Vol. 1, p. 32 (rule 1).
(8) Punjab, *see* Punj. List of R. and O., p. 23.
(9) United Provinces, *see* U. P. List of R. and O., List 3, p. 24.

shall from time to time determine.[1] Any copy or copies delivered pursuant to clause (*b*) of the said paragraph shall be transmitted to the British Museum or the Secretary of State for India, or to the British Museum and the said Secretary of State, as the case may be.

PART IV.

PENALTIES.

Penalty for printing contrary to rule in section 3.

12. Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 of this Act shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

Penalty for keeping press without making declaration required by section 4.

13. Whoever shall keep in his possession any such press as aforesaid, without making such a declaration as is required by section 4 of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

Punishment for making false statement.

14. Any person who shall, in making any declaration under the authority of this Act, make a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, and imprisonment for a term not exceeding two years.

Penalty for printing or publishing periodicals without conforming to rules.

15. Whoever shall print or publish any such periodical work as is hereinbefore described without conforming to the rules hereinbefore laid down, or whoever shall print or publish, or shall cause to be printed or published, any such periodical work, knowing that the said rules have not been observed with respect to that work, shall, on conviction before a Magistrate, be punished with fine not exceeding five thousand rupees, or imprisonment for a term not exceeding two years, or both.

Penalty for not delivering books or not supplying printer with maps.

[2] **16.** If any printer of any such book as is referred to in section 9 of this Act shall neglect to deliver copies of the same pursuant to that section, he shall for every such default forfeit to the Government such sum not exceeding fifty rupees as a Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered or of any person

[1] As to where copies in Burma are to be deposited, *see* Notification No. G. D. 123, dated 13th June, 1890, Bur. R. M.; in the United Provinces, *see* Notification quoted at p. 24 of the U. P. List of R. and O., Vol. I.

[2] This section was substituted by the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890), s. 5, Genl. Acts, Vol. IV.

authorized by that officer in this behalf, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the copies which the printer ought to have delivered.

If any publisher or other person employing any such printer shall neglect to supply him, in the manner prescribed in the second paragraph of section 9 of this Act, with the maps, prints or engravings which may be necessary to enable him to comply with the provisions of that section, such publisher or other person shall for every such default forfeit to the Government such sum not exceeding fifty rupees as such a Magistrate as aforesaid may, on such an application as aforesaid, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the maps, prints or engravings which such publisher or other person ought to have supplied.

Recovery of forfeitures and disposal thereof and of fines.

[1]**17.** Any sum forfeited to the Government under the last foregoing section may be recovered, under the warrant of the Magistrate determining the sum, or of his successor in office, in the manner authorised by the [2] Code of Criminal Procedure for the time being in force, and within the period prescribed by the [3] Indian Penal Code, for the levy of a fine. XLV of 1860.

All fines or forfeitures under this Part of this Act shall, when recovered, be disposed of as the Local Government shall from time to time direct.

PART V.

REGISTRATION OF BOOKS.

Registration of memoranda of books.

18. There shall be kept at such office, and by such officer as the Local Government shall [4] appoint in this behalf, a book to be called a Catalogue of Books printed in British India, wherein shall be registered a memorandum of every book which shall have been delivered [5] [pursuant to clause (*a*) of the first paragraph of section 9] of this Act. Such

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[1] This section was substituted by the Press and Registration of Books Act (1867), Amendment Act, 1890 (10 of 1890), s. 5, Genl. Acts, Vol. IV.

[2] *See* the Code of Criminal Procedure, 1898 (Act 5 of 1898), Genl. Acts, Vol. V.

[3] *Supra.*

[4] For notification directing by whom and where the catalogue of books under this section is to be kept in (1) Assam, *see* Assam Gazette, 1905, Pt. II, p. 190, and (2) Burma, *see* Bur. R. M., Ed. 1906.

[5] These words in s. 18 were substituted for the words and figure "pursuant to section 9" by the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890), s. 6, Genl. Acts, Vol. IV.

memorandum shall (so far as may be practicable) contain the following particulars (that is to say):—

(1) the title of the book and the contents of the title-page, with a translation into English of such title and contents, when the same are not in the English language:
(2) the language in which the book is written:
(3) the name of the author, translator or editor of the book or any part thereof:
(4) the subject:
(5) the place of printing and the place of publication:
(6) the name or firm of the printer and the name or firm of the publisher:
(7) the date of issue from the press or of the publication:
(8) the number of sheets, leaves or pages:
(9) the size:
(10) the first, second or other number of the edition:
(11) the number of copies of which the edition consists:
(12) whether the book is printed or lithographed:
(13) the price at which the book is sold to the public: and
(14) the name and residence of the proprietor of the copyright or of any portion of such copyright.

Such memorandum shall be made and registered in the case of each book as soon as practicable after the delivery of the [1] [copy thereof pursuant to clause (*a*) of the first paragraph of section 9].

Effect of registration.

Every registration under this section shall, upon payment of the sum of two rupees to the officer keeping the said Catalogue, be deemed to be an entry in the Book of Registry kept under [2] Act No. XX of 1847 (*for the encouragement of learning in the territories subject to the government of the East India Company, by the defining and providing for the enforcement of the right called copyright therein*); and the provisions contained in that Act as to the said Book of Registry shall apply, *mutatis mutandis*, to the said Catalogue.

Act XX of 1847 applied.

Publication of memoranda registered.

19. The memoranda registered during each quarter in the said Catalogue shall be published in the local Gazette as soon as may be after the end of such quarter, and a copy of the memoranda so published shall be sent to the said Secretary of State, and to the Secretary to the Government of India in the Home Department, respectively.

[1] These words were substituted for the words "copies thereof in manner aforesaid" by the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890), s. 6, Genl. Acts, Vol. IV.
[2] *Supra.*

PART VI.

MISCELLANEOUS.

Power to make rules.

20. The Local Government shall have power to make such [1] rules as may be necessary or desirable for carrying out the objects of this Act, and from time to time to repeal, alter and add to such rules.

Publication.

All such rules, and all repeals and alterations thereof, and additions thereto, shall be published in the local Gazette.

Power to exclude any class of books from operation of Act.

21. The Governor General of India in Council may, by notification in the Gazette of India,[2] exclude any class of books from the operation of the whole or any part or parts of this Act.

22. [*Continuance of parts of Act.*] *Rep. by Act X of 1890, s. 7.*

23. [*Commencement.*] *Rep. by Act XIV of 1870.*

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[1] For rules made under this power for—
(*1*) Ajmer-Merwara, *see* Aj. R. & O., Vol. I, p. 8;
(*2*) Assam, *see* the E. B. and A. Gazette, 1906, Pt. II, p. 359;
(*3*) Bengal, including districts transferred to E. B. & A., *see* Ben. Stat. R. & O., Vol. II, p. 16;
(*4*) Bombay, *see* the Bom. R. & O., Vol. I;
(*5*) Burma, *see* the Bur. R. M.;
(*6*) Central Provinces, *see* the Cent. Provs. R. & O.;
(*7*) Madras, *see* Fort St. George Gazette, 1902, Pt. IB, p. 204, and *ibid*, 1907, Pt. IB, p. 20;
(*8*) Punjab, *see* Punjab Gazette, 1904, Pt. I, p. 432;
(*9*) United Provinces, *see* U. P. L. R. & O., Vol. I, List 3, p. 25.

[2] For exemptions under this section, see Genl. Stat. R. & O., Vol. I.

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